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Dr. F. A. CASTLE,

MANUAL

FOR THE USE OF

BOARDS OF HEALTH

OF

MASSACHUSETTS,

CONTAINING THE

STATUTES RELATING TO THE PUBLIC HEALTH

AND THE

DECISIONS OF THE SUPREME COURT OF MASSACHUSETTS
RELATING TO THE SAME.

PREPARED BY DIRECTION OF THE

STATE BOARD OF HEALTH.

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INTRODUCTION.

This Manual of the Statutes of Massachusetts relative to Public Health has been prepared at the direction of the State Board of Health, for the use of local boards and for all persons directly interested in questions which pertain to public health.

The former Manual, prepared in 1882 by Geo. F. Piper, Esq., followed quite closely through the first ninety-six sections the numbering employed in the Public Statutes. In consequence of the introduction of many new statutes, enacted since 1882, and the repeal of others, such numbering is necessarily abandoned in the present Manual, while the general order of subjects is preserved as closely as possible. A slight change has been made in the order of sections under the title of infectious diseases, hospitals, etc.

The marginal notes contain the references to the chapters and sections of the Public Statutes, and also to such health laws as have been enacted since 1882.

The dates in heavier type opposite a few of the sections are the years in which those statutes, or laws essentially the same, were first enacted.

The State Registration of Vital Statistics appears to have had its origin in the following act passed in 1639 : —

“Item, that there be records kept . . . of the days of every marriage, birth, and death of every person within this jurisdiction.” — *Colony Laws, Chap. III., 1639.*

The next act having any direct sanitary bearing was the following:—

Chapter 23 of the Acts of the General Assembly of Massachusetts Bay (1692–1693). Second session.

An Act for prevention of Common Nusances arising by Slaughter-houses, still-houses, &c., tallow-chandlers and curriers.

Be it enacted by the Governour, Council, and Representatives convened in General Court, or Assembly, and by the Authority of the same.

(Sect. 1.) That the Selectmen of the towns of Boston, Salem, and Charlestown respectively, or other market towns in the province, with two or more justices of the peace dwelling in the town, or two of the next justices in the county, shall at or before the last day of March, 1693, assign some certain places in each of said towns (where it may be least offensive,) for the erecting or setting up slaughter-houses for the killing of all meat, still-houses, and houses for trying of tallow, and currying of leather (which houses may be erected of timber, the laws referring to building with brick or stone notwithstanding) and shall cause an entry to be made in the town-book of what places shall be by them so assigned, and make known the same by posting it up in some publick places of the town; at which houses and places respectively, and no other, all butchers and slaughter-men, distillers, chandlers, and curriers shall exercise and practise their respective trades and mysteries; on pain that any butcher or slaughter-man transgressing of this act by killing of meat in any other place, for every conviction thereof before one or more justices of the peace, shall forfeit and pay the sum of twenty shillings, and any distiller, Chandler or currier offending against this act, for every conviction thereof before their majesties' justices at the general sessions of the peace for the county, shall forfeit and pay the sum of five pounds; one-third part of said forfeitures to be to the use of their majesties for the support of the government of the province, and the incident charges thereof, one-third to the poor of the town where such offence shall be committed, and the other third to him or them that shall inform and sue for the same.

The second section of this act provided for the prevention of cruelty to animals, except the following final clause:—

“All veal or other meat exposed to sale, that shall be blown up or winded, shall be alike forfeited and disposed of. (Passed Oct. 25, 1692.) — *Province Laws.*

A later act of 1696 provided that such establishments erected in places not thus assigned might be taken down.

A further amendment (June, 1710) provided that when any house or place assigned became "a nuisance by reason of offensive and ill stench," it should be lawful for the court to suppress the same.

An early quarantine act (July, 1699) provided that vessels having on board persons "visited with the small-pox, or any other contagious sickness," or coming from ports where such "sickness is epidemical and prevailing," were not to sail "above the castle or fort, where any such is."

Two years later another act provided that—

"The selectmen should provide a separate place for persons visited, or that late before have been visited with the plague, small-pox, pestilential or malignant fever."—June, 1701.

Laws relative to sewerage and drainage were enacted as follows:—

Appointing commissioners of sewers, 1702; amended in 1745.

Regulating drains and common *shores*, 1709; amended in 1763.

An act of 1776 provided for the establishment of inoculating hospitals for small-pox. This act was amended in the following year. No hospital for such purposes to be established within one hundred rods of any dwelling.

By an act of 1793 inoculation was forbidden except at hospitals established for that purpose.

The act providing for the display of red flags and signals dates also from 1792.

The act requiring the householder to give notice of contagious disease also dates from 1792.

The comprehensive health act of 1797, providing for the prevention of contagious sickness, combined and amended previous legislation, and provided for the prevention of small-pox, plague, etc., and also made provision for quarantine and the care of infected baggage, and for the appointment of a health committee or officer in towns: the origin of the present local health boards.

The act requiring physicians to give notice of contagious diseases was passed in 1827.

The discovery of the protective power of vaccination, and its introduction into Massachusetts at the beginning of this century, was followed by legislation in 1809 providing for the choice of persons to superintend "the cow-pox inoculation," and also for the defraying of the expense by the towns.

Following each section will be found the decisions of the Supreme Court of the State upon the subject-matter of that section.

The Statutes impose upon boards of health the duty of protecting the people from those causes and influences which may injuriously affect their health. In the words of Judge Wells in the case of *City of Salem v. Eastern Railroad Company*, "Their action is intended to be prompt and summary. They are clothed with extraordinary powers for the protection of the community from noxious influences affecting life and health; and it is important that their proceedings should be delayed as little as possible. Delay might defeat all beneficial results; and the necessity of the case, and the importance of the public interests at stake, justify prompt action."

OFFICE OF THE STATE BOARD OF HEALTH,
BOSTON, NOV. 1886.

MANUAL.

GENERAL POWERS AND DUTIES OF STATE BOARD.

1. The governor with the advice and consent of the council shall appoint seven persons who shall constitute the state board of health. The persons so appointed shall hold their offices for seven years ; provided that the terms of office of the seven first appointed shall be so arranged that the term of one shall expire each year. All vacancies on said board, whether occurring by expiration of term, or otherwise, shall be filled by the governor with the advice and consent of the council.

State board of health.
How appointed.
Term of office.
Vacancies, how filled.
1886, 101, § 1.

2. The board shall be provided with rooms at the expense of the state and shall hold meetings each month on a day fixed by itself, and at such other times as may be needful. It shall make its own by-laws, and shall make a report of its doings to the governor and council on or before the thirty-first day of December in each year, such report being made up to the thirtieth day of September inclusive.

Rooms to be provided.
Meetings.
By-laws.
Report.
1886, 101, § 2.

3. The board shall elect a secretary, who shall be the executive officer, and shall hold office during the pleasure of the board. He shall perform or superintend the work prescribed by law for the state board of health, and as directed by the board, and such other duties as the board may require. He shall not be *ex-officio* a member of the board, but the board may, whenever it shall be deemed necessary, elect one of the members secretary *pro tempore* who may in the absence or disability of the secretary per-

Secretary.
Duties.
Secretary *pro tem.*

Salary of secretary.

form the duties of that officer. The secretary shall receive from the treasury an annual salary of twenty-five hundred dollars and his necessary travelling expenses incurred in the performance of official duties. No member of the board shall receive any compensation; but the actual personal expenses of any member while engaged in the duties of the board shall be paid from the treasury, after they have been audited by the board. All other necessary expenses arising in the secretary's office or from the discharge of the duties of the board shall be paid out of the treasury in the same manner as those of the different departments of the government.

Expenses of board and office. 1886, 101, § 3.

Certain general powers and duties of the state board of health. Public Statutes, c. 80, § 1. 1886, 101, § 4.

4. The state board of health shall take cognizance of the interests of health and life among the citizens of the Commonwealth. It shall make sanitary investigations and inquiries in respect to the causes of disease, and especially of epidemics and the sources of mortality and the effects of localities, employments, conditions, and circumstances, on the public health; and shall gather such information in respect to those matters as it may deem proper for diffusion among the people. It shall advise the government in regard to the location and other sanitary conditions of any public institutions.

The state board of health was originally established by chap. 420, Acts of 1869.

Its powers were subsequently enlarged by chap. 167, Acts of 1871, and chap. 183, Acts of 1878.

By chap. 291, Acts of 1879, its powers were transferred to the newly-established state board of health, lunacy and charity.

By chap. 101, Acts of 1886, the state board of health was re-established, and its powers were still further enlarged by chap. 274, Acts of 1886.

Further duties in case of contagious diseases. Public Statutes, c. 80, § 2.

5. If small-pox or any other contagious or infectious disease dangerous to the public health exists, or is likely to exist, in any place within the state, the state board shall investigate the same, and the means of preventing the spread thereof, and shall consult thereon with the local authorities, and shall have co-ordinate powers as a board

of health, in every place, with the board of health or health officer thereof, or with the mayor and aldermen or the selectmen, if no such board or officer exists in such place.

State board shall have co-ordinate powers with local boards.

TOWN AND CITY BOARDS OF HEALTH.

6. A town, respecting which no provision is made by special law for choosing a board of health, may, at its annual meeting or at a meeting legally warned for the purpose, choose a board of health by ballot, to consist of not less than three nor more than nine persons; or may choose a health officer. If no such board or officer is chosen, the selectmen shall be the board of health.

Towns may choose board of health, etc., or selectmen, to act.
Public Statutes, c. 80, § 3.

1797.
1817.

7. If a person elected a member of a board of health in any town, respecting which no provision is made by special law for choosing a board of health, after being duly notified of his election in the manner in which town officers are required to be notified, refuses or neglects to accept said office, or if a member of a board of health in such town declines further service, or from change of residence or otherwise becomes unable to attend to the duties of the board, the remaining members shall, in writing, give notice of the fact to the selectmen of such town, and the two boards shall thereupon, after giving public notice of at least one week, jointly proceed to fill such vacancy.

Vacancy in local board by refusal to accept office, how filled.
1885, 307, § 1.

8. Except where different provision is made by law, the city council of a city may appoint a board of health; may constitute either branch of such council, or a joint or separate committee of their body, a board of health, either for general or special purposes; and may prescribe the manner in which the powers and duties of the board shall be exercised and carried into effect. In default of the appointment of a board with full powers, the city council shall have the powers and perform the duties prescribed to boards of health in towns.

City council may appoint such board; or shall itself act.
Public Statutes, c. 80, § 4.

1821.

Where, by an ordinance of a city, two members of the board of mayor and aldermen, and three members of the common council, were

constituted the board of health, and no provision as to the mode of appointment was made by the ordinance, or by the joint rules and orders of the city council, but the orders of each branch provided that all committees should be appointed by the mayor and the president of the common council respectively, it was held that the members of the joint committee, constituted by the ordinance a board of health, were duly appointed by the presiding officers of each branch, and that the board so constituted and appointed was legally organized.

Taunton v. Taylor, 116 Mass. 254.

Where the city council constitutes the board of health, the power to make regulations as it judges necessary for the public health and safety respecting nuisances, sources of filth and causes of sickness, may as well be exercised by an ordinance as by any other form of regulation.

Commonwealth v. Patch, 97 Mass. 224.

In default of the appointment of a board of health, and where the city council constitutes the board of health, an ordinance which prohibits the keeping or maintaining swine within certain districts of the city, under a penalty not exceeding twenty dollars for each offence, is valid as a health regulation.

Commonwealth v. Patch, 97 Mass. 221.

It is a matter of considerable doubt whether the prohibition of offensive trades is the proper subject of an ordinance or by-law, because that matter is specially provided for by statute, and to prohibit their exercise in any particular locality in a town or city by a by-law or ordinance would interfere with the right of appeal to a jury which the statutes secure.

Commonwealth v. Patch, 97 Mass. 223.

Board may
appoint
physician.
Public Statutes,
c. 80, § 5.

1816.

Compensation
of physician,
etc.
Public Statutes,
c. 80, § 6.

1816.

Present mem-
bers of city
boards of health
under St. 1877,
133, to remain
in office.
Public Statutes,
c. 80, § 7.

Boards of health
to be appointed
in cities, when.

9. Every such board of health may appoint a physician to the board, who shall hold his office during its pleasure.

10. Such board shall establish the salary or other compensation of such physician, and shall regulate all fees and charges of persons employed by it in the execution of the health laws and of its own regulations.

11. Present members of boards of health of cities by appointment under chapter one hundred and thirty-three of the statutes of the year eighteen hundred and seventy-seven, shall continue to hold office during the terms for which they were appointed, unless sooner removed as provided by law.

12. In each city, except Boston, in which a majority of the voters shall have so voted according to law, there

shall be a board of health, consisting of the city physician, and two persons, not members of the city council, appointed by the mayor and aldermen. The term of office of the appointed members shall be two years, and one of them shall retire from office on the first Monday of February in each year. If such board is not already in existence, the mayor and aldermen shall in January next after the vote of the city authorizing such board appoint two members, one for one year, and the other for two years; and the board shall enter on its duties on the first Monday of February after such appointment. All vacancies occurring in boards already in existence or in those hereafter constituted shall be filled by the mayor with the approval of the board of aldermen. Each member so appointed shall be subject to removal by the mayor for cause, and shall receive such compensation as the city council may from time to time determine.

Term of office,
removal, etc.
Public Statutes,
c. 80, § 8.

Under Pub. Stats., chap. 80, sect. 8 (Statute of 1877, chap. 133), which provides that in each of the cities of the Commonwealth, except Boston, the mayor and aldermen shall appoint two persons "who together with the city physician shall constitute the board of health of such city;" and under Pub. Stats., chap. 80, sect. 15 (Statute of 1878, chap. 21), which provides that, "in the cities of the Commonwealth where the city physician is *ex officio* a member of the board of health, said city physician shall be appointed by the mayor, with the approval of the board of aldermen, for a term of three years," the office of city physician is established in a city whose charter and ordinances make no provision in terms for such an office.

If a statute fixes the term of office of an officer of a city, who is to be appointed by the mayor with the approval of the board of aldermen, it is unnecessary that the term of his office should be expressed either in the nomination of the mayor or in the approval by the board of aldermen.

Where a city physician is *ex officio* a member of the board of health his title to his office may be tried by an information in the nature of a *quo warranto*.

If a person is wrongfully holding a public office he may be ousted on an information in the nature of a *quo warranto*, although the term of the person who was entitled to the office when the information was filed expires before judgment is rendered.

Commonwealth v. Swasey, 133 Mass. 538.

How to be
organized.
Public Statutes,
c. 80, § 9.

13. Such boards shall organize annually by the choice of one of their number as chairman; they may also choose a clerk, not a member of the board, and make such rules and regulations for their own government and for the government of all subordinate officers in their department as they may deem expedient.

Powers and
duties.
Public Statutes,
c. 80, § 10.

14. Such boards may exercise all the powers vested in, and shall perform all the duties prescribed to, city councils or mayors and aldermen as boards of health, under the statutes and ordinances in force in their respective cities on the seventeenth day of May in the year eighteen hundred and seventy-seven; and may appoint such subordinate officers, agents and assistants as they may deem necessary, and may fix their compensation and that of their clerk; but the whole amount of such compensation shall not exceed the sum appropriated therefor by the city council.

To make annual
reports.
Public Statutes,
c. 80, § 11.

15. In each city such board of health shall annually, in January, present to the city council a report made up to and including the thirty-first day of the preceding December, and containing a full and comprehensive statement of its acts during the year, and a review of the sanitary condition of the city; it shall also, when the city council or the standing committee thereof on finance so requires, send to the auditor of accounts an estimate in detail of the appropriations required by its department during the next financial year.

May enforce
regulations as
to house
drainage.
Public Statutes,
c. 80, § 12.

16. Such boards may prepare and enforce in their respective cities such regulations as they may deem necessary for the safety and health of the people, with reference to house drainage and its connection with public sewers, where a public sewer abuts the estate to be drained.

1702.

Cities to vote
on acceptance
of five preced-
ing sections,
when.
Public Statutes,
c. 80, § 13.

17.. If at any time a city has not voted to accept the five preceding sections, or chapter one hundred and thirty-three of the statutes of the year eighteen hundred and seventy-seven, and fifty voters residing therein

present a written request to that effect thirty days prior to any meeting for the election of city officers therein, the mayor and aldermen shall notify and warn the legal voters thereof to vote upon the acceptance of said sections at such election.

18. In case of a severe epidemic, or other danger to the public health, the mayor and aldermen of the city where there is no board of health may, upon the request of one hundred voters residing therein, appoint such a board to act during the emergency, with the powers and duties of a board of health duly appointed under section eight [of chapter 80, Public Statutes].

In case of epidemic, etc., boards of health may be appointed in cities not accepting, etc. Public Statutes, c. 80, § 14.

19. In cities where the city physician is *ex officio* a member of the board of health, he shall be appointed by the mayor, with the approval of the board of aldermen, for a term of three years, subject to removal, for cause, by the same authority.

City physician, how appointed, when *ex officio* a member of board; how removed. Public Statutes, c. 80, § 15.

20. The board of health in a city or town may appoint an agent or agents to act for it in cases of emergency, or when it cannot be conveniently assembled; and such agent so appointed shall have all the authority which the board appointing him had; but he shall, within two days, report his action in each case to it for its approval, and shall be directly responsible to it and under its control and direction. An agent appointed to make sanitary inspections may make complaint in cases of violation of any law, ordinance, or by-law relating to the public health in a city or town.

Board of health may appoint agents, etc. Public Statutes, c. 80, § 16.

21. The board of health of a city or town shall retain charge of any case arising under the provisions of this chapter in which it shall have acted, to the exclusion of the overseers of the poor.

To retain charge of a case, after acting therein. Public Statutes, c. 80, § 17.

NUISANCES, SOURCES OF FILTH, CAUSES OF SICKNESS, ETC.

22. The board of health of a town shall make such regulations as it judges necessary for the public health

Board of health to make regulations respecting nuisances, etc.

Public Statutes,
c. 80, § 18.

1797.

and safety, respecting nuisances, sources of filth and causes of sickness, within its town, or on board of vessels within the harbor of such town, and respecting articles which are capable of containing or conveying infection or contagion, or of creating sickness, brought into or conveyed from its town, or into or from any vessel. Whoever violates any such regulation shall forfeit a sum not exceeding one hundred dollars.

The keeping of swine may be prohibited as a sanitary regulation. The prohibition may apply to the entire town or city, or only to a part of the town or city, if that part is so situated as to require peculiar and exceptional provisions.

Commonwealth v. Patch, 97 Mass. 221.

A regulation that no person shall remove, cart, or carry through any of the streets, lanes or alleys of a city, any house-dirt, refuse, offal, filth or animal or vegetable substance from any of the dwelling-houses or other places occupied by the inhabitants, in any cart, wagon, truck, hand-cart or other vehicle, unless such person so removing, together with the cart, shall be duly licensed for that employment and purpose by the mayor and aldermen, upon such terms and conditions as they shall deem the health, comfort, convenience or interest of the city require, on pain of forfeiting a sum not less than three dollars nor more than twenty, is valid.

Vandine, petitioner, 6 Pickering, 187; 135 Mass. 490.

To give notice
of regulations.
Public Statutes,
c. 80, § 19.

1816.

23. The board shall give notice of all regulations made by it by publishing the same in some newspaper of its town, or, where there is no such newspaper, by posting them up in some public place in the town. Such notice shall be deemed legal notice to all persons.

Notice must be given of general regulations prescribed by the board before parties can be held in fault for a disregard of their requirements. But although such general regulations may seriously interfere with the enjoyment of private property, and disturb the exercise of valuable private rights, no previous notice to parties so to be affected by them is necessary to their validity. They belong to that class of police regulations to which all individual rights of property are held subject, whether established directly by enactments of the legislative power, or by its authority through boards of local administration.

City of Salem v. Eastern Railroad Company, 98 Mass. 443.

24. The board shall examine into all nuisances, sources of filth and causes of sickness, within its town, or in any vessel within the harbor of such town, that may in its opinion be injurious to the health of the inhabitants, and shall destroy, remove, or prevent the same as the case may require.

Board of health to examine into and abate nuisances, etc. Public Statutes, c. 80, § 20.

1797.

25. The board or the health officer shall order the owner or occupant at his own expense to remove any nuisance, source of filth, or cause of sickness, found on private property, within twenty-four hours, or such other time as it deems reasonable, after notice served as provided in the following section; and if the owner or occupant neglects so to do, he shall forfeit a sum not exceeding twenty dollars for every day during which he knowingly permits such nuisance or cause of sickness to remain after the time prescribed for the removal thereof.

To order certain nuisances, etc., abated by owner. Public Statutes, c. 80, § 21.

1797.

The board may order the removal of a nuisance without previous notice to the owner or occupant, and without any opportunity by him to be heard.

City of Salem v. Eastern Railroad Company, 98 Mass. 443.

In the above case, Wells, J., says, in relation to boards of health: "Their action is intended to be prompt and summary. They are clothed with extraordinary powers for the protection of the community from noxious influences affecting life and health, and it is important that their proceedings should be embarrassed and delayed as little as possible by the necessary observance of formalities. Although notice and opportunity to be heard upon matters affecting private interests ought always to be given when practicable, yet the nature and object of those proceedings are such that it is deemed to be most for the general good that such notice should not be essential to the right of the board to act for the public safety. Delay for the purpose of giving notice, involving the necessity either of public notice or of inquiry to ascertain who are the parties whose interests will be affected, and further delay for such hearings as the parties may think necessary for the protection of their interests, might defeat all beneficial results from an attempt to exercise the powers conferred upon boards of health. The necessity of the case and the importance of the public interests at stake justify the omission of notice to the individual."

The adjudication of the board that a nuisance exists is conclusive, and no appeal lies therefrom.

City of Salem v. Eastern Railroad Company, 98 Mass. 449.

The board should keep an accurate record of their proceedings, and all adjudications should appear therein in clear and distinct language.

An order of the board of health of a city, under Pub. Stats., chap. 80, sect. 21 (Gen. Stats., chap. 26, sect. 8), directing the owner of land to remove a nuisance in a specific manner is void.

Watuppa Reservoir Company v. Colin Mackenzie, 132 Mass. 71.

In the absence of statutory authority neither the board of health nor the city council of a city has any power to erect a dam on a person's land, without his consent, for the purpose of abating a nuisance existing on adjacent land.

A city is not responsible for damages resulting from work done under the supposed authority of illegal and void votes of the city council; and it is immaterial that the work was done in a negligent manner.

Cavanagh v. City of Boston, 139 Mass. 426.

An indictment charged that the defendant, at certain times and at a place named, "near the dwelling-houses of divers good citizens of the said Commonwealth, and also near divers public streets and common highways there situate," did keep and maintain five hundred swine, "by reason whereof divers large quantities of noisome, noxious and unwholesome smokes, smells and stench on the days and times aforesaid, then and there were emitted, . . . and the air thereabouts . . . greatly filled and impregnated with many noisome . . . stinks and stench, and has been corrupted and rendered very insalubrious, to the great damage and common nuisance of all the citizens," etc. *Held*, sufficient.

A piggery, in which swine are kept in such numbers that their natural odors fill the air thereabouts, and make the occupation of the neighboring houses and passage over the adjacent highways disagreeable, is a nuisance.

On the trial of an indictment for maintaining a common nuisance, by keeping a large number of swine in the neighborhood of certain dwellings and highways, evidence is inadmissible that it is a custom in this Commonwealth to tolerate the location of such establishments in populous localities.

Commonwealth v. Perry, 139 Mass. 198.

Order for abatement, how served.
Public Statutes, c. 80, § 22.

26. Such order shall be made in writing, and served by any person competent to serve a notice in a civil suit, personally on the owner, occupant, or his authorized agent; or a copy of the order may be left at the last and usual place of abode of the owner, occupant, or agent, if he is known and within the state. But if the premises are unoccupied and the residence of the owner or agent is unknown or without the state, the notice may be served

by posting the same on the premises and advertising in one or more public newspapers in such manner and for such length of time as the board or health officer may direct.

The manifest purpose of this provision is to enable the owner or occupant to remedy the evil in the mode least detrimental or offensive to himself, and thus secure himself and his premises from the intrusion of the agents of the board of health.

City of Salem v. Eastern Railroad Company, 98 Mass. 444.

The order addressed to a person directing him to remove a nuisance should describe the nature and locality of the nuisance.

City of Salem v. Eastern Railroad Company, 98 Mass. 444.

It is not the purpose of the order to direct in what mode the person should proceed to remove the nuisance.

It should direct the end to be accomplished, leaving the party to adopt any effectual mode which he may choose.

City of Salem v. Eastern Railroad Company, 98 Mass. 444.

An order of a board of health, reciting that a railroad company, by filling up parts of a mill-pond in Salem, without supplying suitable and safe culverts, sluiceways, trenches, and other means of drainage, have created and are maintaining a nuisance at said pond, which is dangerous to the public health, and a cause of sickness to the inhabitants, and requiring the company to remove said nuisance and cause of sickness within seven days after service of notice of the order, sufficiently informs the company of the nature and locality of the nuisance.

City of Salem v. Eastern Railroad Company, 98 Mass. 431.

27. If the owner or occupant fails to comply with such order, the board may cause the nuisance, source of filth, or cause of sickness, to be removed, and all expenses incurred thereby shall be paid by the owner, occupant, or other person who caused or permitted the same, if he has had actual notice from the board of health of the existence thereof.

Owner not complying, board to remove nuisance at his expense. Public Statutes, c. 80, § 23.

1797.

If the owner or occupant neglects to remove the nuisance, the board are then at liberty to enter upon the private property where it exists, and take such measures as they may see fit for its removal.

City of Salem v. Eastern Railroad Company, 98 Mass. 444.

If the order served upon the party prescribes a certain mode of remedying the existing nuisance, the party is not bound to adopt that mode of remedying the evil, if another mode could be made to answer

the end sought; nor is the board restricted to that mode, if they are obliged to take action. They are not only at liberty, but it is their duty, to exercise their best discretion at the time.

City of Salem v. Eastern Railroad Company, 98 Mass. 445.

The importance of the duty imposed upon boards of health, the necessity of prompt and decisive measures to protect the public health, require a wide discretion in the use of means by which to "destroy, remove or prevent" such cause of sickness. If it be necessary to the proper performance of their duty, they may undoubtedly, in the exercise of their discretion, resort to means and measures which affect injuriously other lands than those upon which the manifestation of the cause of sickness is found.

Thus, where a railroad company built their railroad originally on piles across a body of water, not interfering with the free circulation of the water, but afterwards from time to time filled in with earth the structure, so as to finally make it solid, without providing sufficient culverts or other means of drainage, and thereby divided and confined the waters, and rendered them stagnant and noisome, a source of filth, and injurious to the public health, it was held that the board, after notice to the company and their refusal to act, were justified in entering upon the land of the railroad company, and in digging a trench there, for the purpose of removing or preventing the nuisance existing upon the neighboring land.

City of Salem v. Eastern Railroad Company, 98 Mass. 446.

It is not to be inferred from the fact that the preliminary order is required to be served only upon the owner or occupant of the land upon which the nuisance is found, that the subsequent proceedings for recovery of the expenses of removal are limited to such owner or occupant. By the express terms of the statute, they may be claimed of any "other person who caused or permitted" the nuisance.

As to such other person, it is only requisite that he has had actual notice from the board of the existence thereof.

City of Salem v. Eastern Railroad Company, 98 Mass. 445.

An action to recover expenses incurred in the removal of a nuisance should be brought in the name of the city or town, and not in the names of the members of the board.

City of Salem v. Eastern Railroad Company, 98 Mass. 442.

Winthrop v. Farrar, 11 Allen, 398.

In a suit to recover expenses incurred in removing a nuisance, when prosecuted against a party on the ground that he "caused the same," but who was not heard, and had no opportunity to be heard, such party is not concluded by the findings or adjudications of the board, and may contest all the facts upon which his liability is sought to be established.

City of Salem v. Eastern Railroad Company, 98 Mass. 447.

In a suit to recover expenses incurred in removing a nuisance, when prosecuted against a party on the ground that he "caused the same," the record of proceedings of the board is *prima facie* evidence of the existence of a nuisance which warranted the board in taking action and incurring expense for its removal; but it is not evidence that the nuisance was caused by the defendant, and all the facts upon which it is sought to charge the defendant with liability are open to be tried and determined by the proofs in the case.

City of Salem v. Eastern Railroad Company, 98 Mass. 451.

28. The board, when satisfied upon due examination that a cellar, room, tenement, or building, in its town, occupied as a dwelling-place, has become, by reason of the number of occupants, want of cleanliness, or other cause, unfit for such purpose, and a cause of nuisance or sickness to the occupants or the public, may issue a notice in writing to such occupants, or any of them, requiring the premises to be put into a proper condition as to cleanliness, or, if they see fit, requiring the occupants to quit the premises within such time as the board may deem reasonable. If the persons so notified, or any of them, neglect or refuse to comply with the terms of the notice, the board may cause the premises to be properly cleansed at the expense of the owners, or may remove the occupants forcibly and close up the premises, and the same shall not be again occupied as a dwelling-place without the consent in writing of the board. If the owner thereafter occupies or knowingly permits the same to be occupied without such permission in writing, he shall forfeit not less than ten nor more than fifty dollars.

Board may notify occupants of unfit dwelling-place to quit, etc.
Public Statutes, c. 80, § 24.

29. When a person is convicted on an indictment for a common nuisance injurious to the public health, the court in its discretion may order it to be removed or destroyed at the expense of the defendant, under the direction of the board of health; and the form of the warrant to the sheriff or other officer may be varied accordingly.

When a party is convicted of a nuisance, board may order it destroyed.
Public Statutes, c. 80, § 25.

1801.

30. The superior court, or a justice thereof in term time or vacation, may, either before or pending a prosecution for a common nuisance affecting the public health,

Injunction may issue in cases of nuisance.
Public Statutes, c. 80, § 26.

1827.

Board may
make compul-
sory examina-
tion of premises,
when.
Public Statutes,
c. 80, § 27.

issue an injunction to stay or prevent the same until the matter is decided by a jury or otherwise; may enforce such injunction according to the course of proceedings in chancery; and may dissolve the same when the court or one of the justices shall think proper.

1816.

31. When the board thinks it necessary for the preservation of the lives or health of the inhabitants to enter any land, building, premises, or vessel within its town, for the purpose of examining into and destroying, removing, or preventing a nuisance, source of filth, or cause of sickness, and the board or any agent thereof sent for that purpose is refused such entry, any member of the board or such agent may make complaint under oath to any justice of any court of record or to two justices of the peace of the county, stating the facts of the case so far as he has knowledge thereof; and said justice or justices may thereupon issue a warrant, directed to the sheriff or any of his deputies, to such agent of the board, or to any constable of such town, commanding him to take sufficient aid, and at any reasonable time repair to the place where such nuisance, source of filth, or cause of sickness complained of may be, and to destroy, remove, or prevent the same, under the directions of the board.

Expenses re-
coverable of
individuals,
how sued for.
Public Statutes,
c. 80, § 80.

32. Expenses incurred by a town in the removal of nuisances or for the preservation of the public health, which are recoverable of a private person or corporation, may be sued for and recovered in an action of contract.

Fines and for-
feitures to inure
to use of towns.
Public Statutes,
c. 80, § 81.

33. Fines and forfeitures incurred under general laws, the special laws applicable to a town, or the by-laws and regulations of a town, relating to health, shall inure to the use of such town.

Under Statute 1849, chap. 211, sect. 7, which provides that all fines and forfeitures, incurred under the general law or the special laws applicable to any town or city, or the ordinances, by-laws, and regulations of any town or city, relating to health, shall inure to the use of such town or city, and may be recovered by complaint in the name of

the treasurer, it was held that such fines and forfeitures were recoverable only by complaint in the name of the treasurer of the city or town, and in no other way.

Commonwealth v. Fahey, 5 Cush. 408.

Under sect. 26, chap. 28 of the Public Statutes, the city marshal or other police officer, or the city treasurer, may prosecute for all fines and forfeitures which may inure to the city.

The ordinances and by-laws of the city of Boston relating to burying-grounds and the burial of the dead were held to be regulations relating to health within the meaning of the above statute.

Commonwealth v. Fahey, 5 Cush. 411.

WET, ROTTEN, AND SPONGY LANDS.

34. Lands in a city or town which are wet, rotten, or spongy, or covered with stagnant water, so as to be offensive to persons residing in the vicinity thereof, or injurious to health, shall be deemed to be a nuisance, and the board of health or health officer of such city or town may, upon petition and hearing, abate such nuisance in the manner provided in the following sections.

Lands injurious to health, etc., deemed a nuisance. Public Statutes, c. 80, § 28.

35. Any person claiming to be injuriously affected by such nuisance may, by petition describing the premises upon which it is alleged to exist, and setting out the nature of the nuisance complained of, apply to the board or health officer for its abatement; thereupon such board or health officer shall proceed to view the premises, and examine into the nature and cause of such nuisance.

Persons injuriously affected, etc., may apply to board for abatement. Public Statutes, c. 80, § 29.

36. Upon such examination, the board or health officer, if of opinion that the prayer of the petition or any part thereof should be granted, shall appoint a time and place for a hearing, and before the time so appointed shall cause reasonable notice of the time and place to be given to the petitioners, the persons whose lands it may be necessary to enter upon to abate the nuisance, and any other persons who may be affected by the proceedings, and, except in those cities and towns in which the mayor and aldermen and selectmen constitute the board of health, to the mayor or the chairman of the selectmen, that they may be heard upon the necessity and mode of abating such

Board to appoint hearing, etc. Public Statutes, c. 80, § 30.

nuisance, and the questions of damages, and of the assessment and apportionment of the expenses of the abatement.

Form of notice,
and how served.
Public Statutes,
c. 80, § 31.

37. Such notice shall be in writing, and may be served, by any person competent to serve civil process, upon the mayor, or chairman of the selectmen, the petitioners, the owner or occupant of any land upon which it may be necessary to enter, or which may be benefited by the abatement, or the authorized agent of such owner or occupant, or by leaving an attested copy of such notice at the last and usual place of abode of such persons; but if the lands are unoccupied, and the owner or agent is unknown, or out of the State, the notice to such owner may be served by posting an attested copy thereof upon the premises, or by advertising in one or more public newspapers in such manner and for such length of time as the board or health officer may direct.

Board after
hearing may
abate nuisance.
Manner of such
abatement.
Damages, and
upon whom
assessed.
Public Statutes,
c. 80, § 32.

38. At the time and place appointed for the hearing, the board or health officer shall hear the parties, and after the hearing may cause such nuisance to be abated, according to its or his discretion; and for that purpose may enter and make such excavations, embankments, and drains upon any lands, and under and across any streets and ways, as may be necessary for such abatement; and shall also determine in what manner and at whose expense the improvements made shall be kept in repair, and shall estimate and award the amount of damage sustained by and benefit accruing to any person by reason of such improvements, and what proportion of the expense of making and keeping the same in repair shall be borne by the city or town and by any person benefited thereby. The damages so awarded shall be paid by the city or town, and there shall be assessed to the several persons benefited by such improvements their proportionate part, to be ascertained as before provided, of the expense of making and keeping in repair such improvements, and the same shall be included in the next city or town taxes of such persons, and shall be a lien upon the real estate ben-

efted thereby, and be collected in the same manner as other taxes upon real estate, and shall be liable to abatement as other taxes now are.

39. The board or health officer shall, within thirty days after the abatement of any nuisance in the manner hereinbefore provided, make return to the city or town clerk of its or his doings in the premises, which return shall be by him recorded in the city or town records.

Board to make return of doings to town clerk. Public Statutes, c. 80, § 33.

40. If the board or health officer unreasonably refuses or neglects to proceed in the matter of such petition, the petitioner may apply by petition to the superior court or any justice thereof, who, upon a hearing and good cause shown, may appoint three commissioners, who shall proceed in the manner hereinbefore provided.

If board unreasonably refuses to act, superior court may appoint commissioners. Public Statutes, c. 80, § 34.

41. Any person aggrieved by the decision of the board, health officer, or commissioners, in their estimate and award of damages, may make complaint to the county commissioners for the county at any time within one year after the return to the city or town clerk; whereupon the the same proceedings shall be had as in cases where persons or parties are aggrieved by the award of damages by selectmen for land taken for a town way.

Persons aggrieved in award of damages may apply for jury. Public Statutes, c. 80, § 35.

An order of the board of health of a city, under Pub. Stats., chap. 80, sect. 32 (Statute of 1868, chap. 160), directing the owner of land to remove a nuisance, is void if passed without a previous notice and hearing.

The owner of swamp-land conveyed to a reservoir company [authorized by its charter to store water, and to drain off the same in such manner as it should deem best, and for this purpose to acquire land by purchase or otherwise] the right of flowing or raising the waters of a pond over his land by a deed containing full covenants of seisin and warranty. *Held*, that the deed conveyed an easement in the land, and was not a release of damages for flowing the land; and that the reservoir company might maintain a bill in equity against the owner of the land to restrain him from filling the same.

Watuppa Reservoir Company v. Colin McKenzie, 132 Mass. 71.

A petition to the board of health of a city described a nuisance as "owing to large quantities of stagnant water standing in an open drain between" two streets of the city. The board of health issued a notice that it was acting under the Pub. Stats., chap. 80, sects. 30, 31 and

32 (Statute of 1868, chap. 160), and abated the nuisance. On a petition for a writ of certiorari to quash the proceedings of the board of health, it did not appear whether the drain was a public or a private one, nor for what purpose it was made; and it appeared to be a watercourse. *Held*, that it could not be said that the nuisance was not such as could be abated under the Pub. Stats., chap. 80, sects. 30, 31 and 32 (Statute of 1868, chap. 160), and that it was too late to take this objection.

Grace v. Newton Board of Health, 135 Mass. 490.

On a petition for a writ of certiorari to quash the proceedings of the board of health of a city, assessing the expense of abating a nuisance under the Pub. Stats., chap. 80, sect. 32 (Statute of 1868, chap. 160), the record showed a petition addressed to the board of health, which complained of large quantities of stagnant water standing in an open drain between two streets, from which arose such unhealthy odors as to cause great sickness in the neighborhood, and prayed for a hearing; a reference of the same to the next city government; a vote of the board of health, the next year, to view the premises; a view taken; an order that the city engineer, under direction of a committee, be directed to widen, straighten and deepen a watercourse between the two streets, and that the clerk be instructed to notify abutters on the watercourse of a hearing on a certain day, under the Pub. Stats., chap. 80, sect. 30 (Statute of 1868, chap. 160); a warrant issued by the clerk to a constable to notify abutters of the intention of the board of health to enter upon the premises for the purpose of widening, deepening and straightening the brook, and that a hearing would be given, at a time and place named, to all parties interested in the matter, as to the necessity and mode of abating the nuisance caused by the brook, and the question of damages, and of the assessment and apportionment of the expenses thereof; and a notice setting forth these things, and stating that it was in accordance with the Pub. Stats., chap. 80, sect. 32 (Statute of 1868, chap. 160). *Held*, that it sufficiently appeared that the board was attempting to act under this statute. *Held*, also, that the petition was sufficient to give the board jurisdiction.

Grace v. Newton Board of Health, 135 Mass. 490.

An assessment cannot be levied, for expenses incurred by a board of health under the Pub. Stats., chap. 80, sect. 32 (Statute of 1868, chap. 160), upon a person to whom notice of the hearing provided for in sect. 30 (3) is not given, although he has knowledge of the doing of the work whereby the expenses are incurred.

Under the Pub. Stats., chap. 80, sect. 32 (Statute of 1868, chap. 160), a board of health may act by a committee in abating a nuisance. If a board of health has given notice of a hearing under the Pub. Stats., chap. 80, sect. 30 (Statute of 1868, chap. 160, sect. 3), it need not give a new notice of its intention to make an assessment, under sect. 32 (5).

A report of a committee of the board of health of a city, upon the assessment of damages and benefits sustained by the abatement of a

nuisance, under the Pub. Stats., chap. 80, sect. 32 (Statute of 1868, chap. 160, sect. 3), was accompanied by orders drawn in accordance with the report, and by warrants upon the city treasurer for the collection of assessments. The record showed that the report was accepted and the orders and warrants adopted. *Held*, that the adoption of the report sufficiently appeared.

Grace v. Newton Board of Health, 135 Mass. 490.

APPEAL TO COUNTY COMMISSIONERS.

42. Any person aggrieved by the neglect or refusal of the board of health in a city or town to pass all proper orders abating a nuisance or nuisances may appeal to the county commissioners, who may hear and determine the matter of such appeal, and exercise in such case all the powers which the board might exercise.

Persons aggrieved by refusal of board to abate a nuisance may appeal to county commissioners. Public Statutes, c. 80, § 36.

43. The party so appealing shall, within twenty-four hours after such neglect or refusal, give written notice to the opposite party of his intention so to appeal, and within seven days shall present a petition to some one of the commissioners, setting forth the grievances complained of, and the action of the board of health thereon, and shall thereupon enter into such recognizance before the commissioners, in such sum, and with such surety or sureties, as they shall order.

Party appealing to give notice, etc. Other proceedings. Public Statutes, c. 80, § 37.

44. Each commissioner, when acting under the provisions of this chapter, shall tax three dollars per day for time, and five cents a mile for travel to and from the place of meeting, to be paid into the county treasury; and such costs shall in the first instance be paid by the appellant, and the commissioners may award that such costs and any other costs of the proceeding shall be paid by either party, as in their judgment justice shall require.

Costs and expenses, how paid. Public Statutes, c. 80, § 38.

DISEASES DANGEROUS TO PUBLIC HEALTH; HOSPITALS; INFECTED PERSONS AND THINGS; CONTAGIOUS DISEASES IN PUBLIC SCHOOLS.

45. When a householder knows that a person within his family is sick of small-pox, diphtheria, scarlet fever

Householders to give notice of dangerous diseases.

Penalty.
Public Statutes,
c. 80, § 78.
1884, 98, § 1.

1792.

or any other disease dangerous to the public health, he shall immediately give notice thereof to the selectmen or board of health of the town in which he dwells, and upon the death, recovery or removal of such person, the rooms occupied and the articles used by him shall be disinfected by such householder in a manner approved by the board of health. Any person neglecting or refusing to comply with either of the above provisions shall forfeit a sum not exceeding one hundred dollars.

Physicians to
give notice.
Penalty.
Public Statutes,
c. 80, § 79.
1884, 98, § 2.

1827.

46. When a physician knows that a person whom he is called to visit is infected with small pox, diphtheria, scarlet fever or any other disease dangerous to public health, he shall immediately give notice thereof to the selectmen or board of health of the town; and if he refuses or neglects to give such notice he shall forfeit for each offence not less than fifty nor more than two hundred dollars.

Records to be
kept.

47. The boards of health in the several cities and towns shall cause a record to be kept of all reports received in pursuance of the preceding sections and such record shall contain the names of all persons who are sick, the localities in which they live, the diseases with which they are affected, together with the date and the names of the persons reporting any such cases. The boards of health shall give the school committee immediate information of all cases of contagious diseases reported to them according to the provisions of this act.

School committee to be notified.
1884, 98, § 3.

Secretary to
furnish blank
record-books.
1884, 98, § 4.

48. The secretary of the commonwealth shall furnish the boards of health with blank books for the record of cases of contagious diseases as above provided.

Local boards to
notify state
board of cases
of small-pox.
1883, 138, § 1.
1886, 101, § 4.

49. When the board of health of any city or town has had notice of the occurrence of a case of small-pox in such city or town, such board of health shall, within twenty-four hours after the receipt of such notice, notify the state board of health of the same, and the secretary of said state board shall forthwith transmit a copy of the notice so received to the state board of lunacy and charity.

50. If the board of health of the city or town, in which a case of small-pox has occurred, refuses or neglects to send a notice as required in section one, such city or town shall forfeit its claim upon the commonwealth, for the payment of any expenses which may be incurred, as provided in section eighty-three of chapter eighty of the Public Statutes.

Forfeiture of claim for expenses, if local board neglects to notify.
1883, 138, § 2.

51. The school committees shall not allow any pupil to attend the public schools while any member of the household to which such pupil belongs is sick of small-pox, diphtheria or scarlet fever, or during a period of two weeks after the death, recovery or removal of such sick person; and any pupil coming from such household shall be required to present, to the teacher of the school the pupil desires to attend, a certificate, from the attending physician or board of health, of the facts necessary to entitle him to admission in accordance with the above regulation.

School committees not to allow children sick with contagious diseases to attend school. Certificate of recovery required.
1885, 198, § 1.

52. The board of health of a town may grant permits for the removal of any nuisance, infected articles, or sick person, within the limits of its town, when it thinks it safe and proper so to do.

Board may permit removal of infected articles, etc.
Public Statutes, c. 80, § 39.

53. When a person coming from abroad or residing in a town in this state is infected, or lately has been infected, with the plague or other sickness dangerous to the public health, except as is otherwise provided in this chapter, the board shall make effectual provision in the manner which it judges best for the safety of the inhabitants by removing such person to a separate house or otherwise, and by providing nurses and other assistance and necessities, which shall be at the charge of the person himself, his parents, or master, if able, otherwise at the charge of the town to which he belongs; or if he is not an inhabitant of any town, at the charge of the commonwealth.

1816.
Board to make provision for persons infected.
Public Statutes, c. 80, § 40.

1797.

Notice should be given to the town to which the infected person belongs, before commencing an action to recover the expenses incurred by furnishing him with assistance and necessities.

Inhabitants of Springfield v. Inhabitants of Worcester, 2 Cush. 52.

The following notice sent by the selectmen of Springfield to the selectmen of Worcester was held to be sufficient:—

SPRINGFIELD, May 25, 1868.

GENTLEMEN,—James E. Eiden, a colored man, came here, not far from the first of this month, attacked with the small-pox. The expenses of his sickness have been borne by this town, the man himself having no means of paying them. According to the information we have, the town of Worcester is liable for these expenses. We have therefore thought it our duty (although not legally obliged us to do), to notify you of the case, that you may take such measures in regard to it as you may deem proper. We are told Henry W. Miller, of your place, is well acquainted with Eiden.

The physicians who have had charge of the case state that their patient will probably recover. His disease has been the worst form of small-pox.

In behalf of the selectmen of Springfield,

HENRY MORRIS, *Chairman.*

TO THE SELECTMEN OF WORCESTER.

Inhabitants of Springfield v. Inhabitants of Worcester, 2 Cush. 52.

Under the Pub. Stats., chap. 80, sects. 40, 41, 75, the board of health of a town has no authority to take possession of a dwelling-house and the furniture therein, without the consent of the owner and occupant and to his exclusion, and use the house as a hospital for a person found therein who is infected with a contagious disease, and is too sick to be removed without danger to his health; and the owner cannot maintain an action of contract against the town for the use and occupation of the house during the time it was so held by the board of health.

Spring v. Hyde Park, 137 Mass. 554.

A member of the board of health of a town has no authority, against the consent of the owner or occupant, to take possession of a dwelling-house in which a contagious disease exists, and of the furniture therein, to the exclusion of such owner or occupant, and to carry away and destroy portions of the furniture, or to station a person on the premises with instructions to prevent ingress to and egress from the same, except in the manner pointed out in the Pub. Stats., chap. 80.

In an action against a member of the board of health of a town, who unlawfully took possession of the furniture in a house in which a contagious disease existed, and destroyed it, the defendant asked the judge to rule that the measure of damages was the market value of the property in its infected condition. The judge refused so to rule, and instructed the jury that the plaintiff was entitled to recover what the property was worth at the time it was taken, taking into consideration how much the value had been affected by its exposure to infection. *Held*, that the defendant had no ground of exception.

Brown v. Murdock, 140 Mass. 314.

If infected person cannot be removed, others may be.
Public Statutes, c. 80, § 41.

54. If the infected person cannot be removed without danger to his health, the board shall make provision for him, as directed in the preceding section, in the house in

which he may be; and may cause the persons in the neighborhood to be removed, and take such other measures as it judges necessary for the safety of the inhabitants.

55. The board of health of a town near to or bordering upon either of the neighboring states may appoint, by writing, suitable persons to attend at places by which travellers may pass from infected places in other states; who may examine such travellers as it suspects of bringing any infection dangerous to the public health, and if need be may restrain them from travelling until licensed thereto by the board of health of the town to which they may come. A traveller coming from such infected place, who without such license travels within this state (except to return by the most direct way to the state whence he came), after he has been cautioned to depart by the persons so appointed, shall forfeit a sum not exceeding one hundred dollars. **1797.**

Persons may be stationed in places bordering on other states to examine, &c. Public Statutes, c. 80, § 42.

56. Two justices of the peace may, if need be, make out a warrant directed to the sheriff of the county or his deputy, or to any constable, requiring them under the direction of the board to remove any person infected with contagious sickness, or to impress and take up convenient houses, lodging, nurses, attendants and other necessities, for the accommodation, safety and relief of the sick. **1797.**

Two justices may issue warrant to remove sick persons, &c. Public Statutes, c. 80, § 43.

57. When, upon the application of the board, it appears to a justice of the peace that there is just cause to suspect that baggage, clothing or goods found within the town are infected with the plague or other disease dangerous to the public health, he shall, by warrant directed to the sheriff or his deputy, or to any constable, require him to impress so many men as said justice may judge necessary to secure such baggage, clothing or goods, and to post said men as a guard over the house or place where such articles are lodged; who shall take effectual care to prevent persons from removing or coming near the same until due inquiry is made into the circumstances. **1797.**

One justice may issue warrant to secure infected articles, &c. Sheriff may impress aid. Public Statutes, c. 80, § 44.

Officers may take houses and stores for safe keeping of goods, etc. Public Statutes, c. 80, § 43.

1797.

May break open houses, shops, etc., and command aid. Public Statutes, c. 80, § 26.

1797.

Expenses to be paid by owners of goods. Public Statutes, c. 80, § 47.

1797.

Town to make compensation for houses, etc., or services impressed. Public Statutes, c. 80, § 48.

Removal of prisoners attacked with disease. Public Statutes, c. 80, § 49.

1816.

58. The justice may by the same warrant, if it appears to him necessary, require the officers, under the direction of the board, to impress and take up convenient houses or stores for the safe keeping of such articles; and the board may cause them to be removed thereto, or otherwise detained, until, in the opinion of the board, they are freed from infection.

59. The officers, in the execution of the warrant, shall, if need be, break open any house, shop or other place, mentioned in the warrant, where such articles are; and may require such aid as is necessary to effect the execution of the warrant. Whoever neglects or refuses to assist in the execution of the warrant, after being commanded to assist by either of said officers, shall forfeit a sum not exceeding ten dollars.

60. The charges of securing such articles, and transporting and purifying the same, shall be paid by the owners, at such rates and prices as may be determined by the board.

61. When a sheriff or other officer impresses or takes up any houses, stores, lodging or other necessities, or impresses men as provided in this chapter, the several parties interested shall be entitled to a just compensation therefor, to be paid by the town in which such persons or property are so impressed.

62. When a person confined in a common jail, house of correction or workhouse, has a disease which, in the opinion of the physician of the board or of such other physician as it may consult, is dangerous to the safety and health of other prisoners or of the inhabitants of the town, the board shall by its order in writing direct the removal of such person to some hospital or other place of safety, there to be provided for and securely kept so as to prevent his escape until its further order. If such person recovers from the disease, he shall be returned to said prison or other place of confinement.

63. If the person so removed is committed by order of court or under judicial process, the order for his removal, or a copy thereof attested by the presiding member of the board, shall be returned by him, with the doings thereon, into the office of the clerk of the court from which the process of commitment was issued. No prisoner so removed shall thereby commit an escape.

Return of removal to be made to court. Such removal not an escape. Public Statutes, c. 80, § 50.

1816.

64. Any town may establish within its limits, and be constantly provided with, one or more hospitals for the reception of persons having a disease dangerous to the public health.

Hospitals may be provided by towns. Public Statutes, c. 80, § 70.

1701.

65. Such hospitals shall be subject to the orders and regulations of the board, or of a committee of the town appointed for that purpose.

To be under orders of board of health. Public Statutes, c. 80, § 71.

66. No such hospital shall be established within one hundred rods of an inhabited dwelling-house situated in an adjoining town, without the consent of such town.

Not to be near dwelling-house, etc. Public Statutes, c. 80, § 72.

1776.

67. Whoever occupies or uses a building for a hospital in a part of a city or town prohibited by the mayor and aldermen or selectmen shall forfeit a sum not exceeding fifty dollars for every month he so occupies or uses such building, and in like proportion for a portion of a month; and the supreme judicial court in term time or vacation may issue an injunction to prevent such occupancy or use.

Not to be occupied without authority. Injunction. Public Statutes, c. 80, § 73.

68. When a hospital is established, the physician, nurses, attendants, the persons sick therein, and all persons approaching or coming within the limits thereof, and all furniture and other articles used or brought there, shall be subject to such regulations as may be made by the board of health or the committee appointed for that purpose.

Physicians, etc., in hospitals, subject to board of health. Public Statutes, c. 80, § 74.

69. When a disease dangerous to the public health breaks out in a town, the board shall immediately provide such hospital or place of reception for the sick and infected as is judged best for their accommodation and the safety of the inhabitants, which shall be subject to the regulations

If dangerous disease breaks out, board to provide hospital, etc. Public Statutes, c. 80, § 75.

1701.

of the board; and the board may cause any sick and infected person to be removed thereto, unless his condition will not admit of his removal without danger to his health, in which case the house or place where he remains shall be considered as a hospital, and all persons residing in or in any way concerned within the same shall be subject to the regulations of the board as before provided.

Selectmen to give notice of infected places. Public Statutes, c. 80, § 76.

1792.

70. When such disease is found to exist in a town, the selectmen and board of health shall use all possible care to prevent the spreading of the infection, and to give public notice of infected places to travellers, by displaying red flags at proper distances, and by all other means which in their judgment shall be most effectual for the common safety. And whoever obstructs the selectmen, board of health, or its agent, in using such means to prevent the spreading of the infection, or wilfully removes, obliterates, defaces, or handles the red flags or other signals so displayed, shall forfeit for each offence not less than ten nor more than one hundred dollars.

Penalty on persons in hospitals for violating regulations. Public Statutes, c. 83, § 77.

1792.

71. If a physician or other person in any of the hospitals or places of reception before mentioned, or who attends, approaches, or is concerned with the same, violates any regulation lawfully made in relation thereto, either with respect to himself or his or any other person's property, he shall for each offence forfeit not less than ten nor more than one hundred dollars.

Certain provisions not to apply to small-pox. Public Statutes, c. 80, § 82.

72. The provisions of sections forty, forty-one, seventy-five, seventy-six, and seventy-seven, of chapter eighty, Public Statutes, so far as they confer authority for the removal of patients from their homes, except in cases of persons residing in boarding-houses, hotels, or where two or more families occupy the same dwelling, and other cases, where in the opinion of the board and the attending physician the case cannot be properly isolated, shall not apply to small-pox.

Expenses, how to be paid. Public Statutes, c. 80, § 83.

73. All reasonable expenses which have been heretofore or may hereafter be incurred by the board of health

of a city or town, in making the provision required by law for a person infected with the small-pox or other disease dangerous to the public health, shall be paid by the person himself, his parents, or master, if able; otherwise by the town in which he has a legal settlement; and if he has no settlement, by the Commonwealth, in which case the bills therefor shall be approved by the state board of lunacy and charity.

VACCINATION.

1809.*

74. Parents and guardians shall cause their children and wards to be vaccinated before they attain the age of two years, and revaccinated when the selectmen or mayor and aldermen shall after five years from the last vaccination require it. For every year's neglect the party offending shall forfeit five dollars.

Parents, etc., to cause children to be vaccinated. Penalty for neglect. Public Statutes, c. 80, § 51.

75. The selectmen and mayor and aldermen shall require and enforce the vaccination of all the inhabitants, and, when in their opinion the public health requires it, the revaccination of all the inhabitants who do not prove to their satisfaction that they have been successfully vaccinated or revaccinated within five years. Every person over twenty-one years of age, not under guardianship, who neglects to comply with any such requirement, shall forfeit five dollars.

Selectmen, etc., to enforce vaccination. Penalty for neglect. Public Statutes, c. 80, § 52.

76. Towns shall furnish the means of vaccination to such of their inhabitants as are unable to pay for the same.

Towns to provide means. Public Statutes, c. 80, § 53.

77. Incorporated manufacturing companies, superintendents of almshouses, state reform schools, industrial schools, lunatic hospitals, and other places where the poor and sick are received, masters of houses of correction, jailers, keepers of prisons, warden of the state prison, and superintendents or officers of all other institutions supported or aided by the state, shall at the expense of

Inmates of factories, etc., to be vaccinated. Public Statutes, c. 80, § 54.

* Chapter 117, section 2, Acts of 1809, provided for "inoculation of the inhabitants with the cow-pox, under the direction of the town board of health, or of a committee chosen for that purpose."

their respective establishments or institutions cause all inmates thereof to be vaccinated immediately upon their entrance thereto, unless they produce sufficient evidence of previous successful vaccination within five years.

Towns may make further provision for vaccination.
Public Statutes, c. 80, § 55.

School committee not to allow unvaccinated children to attend public schools.
Public Statutes, c. 47, § 9.

78. Each town may make further provision for the vaccination of its inhabitants, under the direction of the board of health or a committee chosen for the purpose.

79. The school committee shall not allow a child who has not been duly vaccinated to be admitted to or connected with the public schools.

LYING-IN HOSPITALS.

Selectmen may license lying-in hospitals, on certificate, etc.
Public Statutes, c. 80, § 58.

80. The selectmen of a town may license any person to establish or keep therein a lying-in hospital, hospital ward, or other place for the reception, care, and treatment of women in labor, if the board of health shall first certify to the selectmen that the person applying for such license is in its judgment a suitable person, and that from its inspection and examination of such hospital, hospital ward, or other place aforesaid, the same is suitable, and properly arranged and provided for such business.

Licenses to be for two years, but revocable.
Public Statutes, c. 80, § 57.

Hospitals subject to visitation, etc.
Public Statutes, c. 80, § 58.

81. Such license shall continue in force for two years, subject, however, to revocation by the selectmen.

82. Every such hospital, hospital ward, or other place shall be subject to visitation and inspection at any time by the board of health, the chief of police, and the selectmen; and if it receives in a year more than six women as patients in labor, it shall also be subject to like visitation and inspection by the state board of health.

Penalties for keeping hospital without license.
Public Statutes, c. 80, § 59.

83. Whoever establishes or keeps or is concerned in establishing or keeping a hospital, hospital ward, or other place for the purpose mentioned in section fifty-six, or is engaged in any such business, without such license, shall for the first offence be punished by a fine not exceeding five hundred dollars, one half of which shall be paid to the complainant, and the other half to the town; and for any subsequent offence by imprisonment in the jail or house of correction not exceeding two years.

PROTECTION OF INFANTS.

84. Whoever engages in the business of taking nursing infants or infants under three years of age to board, or of entertaining or boarding more than two such infants in the same house at the same time, shall, within two days after the reception of every such infant beyond the first two, give written notice to the board of health of the city or town where such infant is so to be entertained or boarded, specifying the name and age of the child and the name and place of residence of the party so undertaking its care; and such board may enter and inspect said house and premises while said business is carried on, and direct and enforce such sanitary measures respecting such children and premises as it may deem proper.

Persons taking infants to nurse or board to give notice to board of health. Power of the board. Public Statutes, c. 80, § 60.

85. Whoever violates any of the provisions of the preceding section, or refuses admission to such board for said purpose, shall be punished by a fine of not less than fifty nor more than five hundred dollars.

Penalties. Public Statutes, c. 80, § 61.

QUARANTINE.

86. A town may establish a quarantine ground in a suitable place either within or without its own limits; but if such place is without its limits, the assent of the town within whose limits it may be established shall be first obtained.

Towns may establish a quarantine ground. Public Statutes, c. 80, § 62.

1756.

87. Two or more towns may at their joint expense establish a quarantine ground for their common use in a suitable place either within or without their own limits; but if such place is without their limits, they shall first obtain the assent of the town within whose limits it may be.

Two or more towns may establish a common quarantine ground. Public Statutes, c. 80, § 63.

88. The board of health in each seaport town may from time to time establish the quarantine to be performed by vessels arriving within its harbor, and may make such quarantine regulations as it judges necessary for the health and safety of the inhabitants.

Board of health may establish the quarantine of vessels. Public Statutes, c. 80, § 64.

1699.

Quarantine regulations to extend to all persons, etc. Public Statutes, c. 90, § 65.

1816.

Penalty for violation after public notice. Public Statutes, c. 90, § 65.

1816.

Vessels suspected of infection to be ordered to quarantine ground. Public Statutes, c. 90, § 67.

1816.

Penalty, if master, seamen, &c., refuse to answer on oath. Public Statutes, c. 90, § 65.

1797.

Quarantine expenses to be paid by person or owner. Public Statutes, c. 90, § 66.

1816.

89. Such regulations shall extend to all persons, goods, and effects arriving in such vessels, and to all persons who may visit or go on board of the same.

90. Whoever violates any such regulation after notice thereof has been given in the manner before provided in this chapter shall forfeit not less than five nor more than five hundred dollars.

91. The board in each seaport town may at any time cause a vessel arriving in such port, when such vessel or the cargo thereof is in its opinion foul or infected so as to endanger the public health, to be removed to the quarantine ground and thoroughly purified at the expense of the owners, consignees, or persons in possession of the same: and may cause all persons arriving in or going on board of such vessel, or handling the cargo, to be removed to any hospital under the care of the board, there to remain under their orders.

92. A master, seaman, or passenger, belonging to a vessel on board of which any infection then is or has lately been, or is suspected to have been, or which has been at or has come from a port where an infectious distemper prevails that may endanger the public health, who refuses to make answer on oath to such questions as may be asked him relating to such infection or distemper by the board of health of the town to which such vessel may come (which oath any member of the board may administer), shall forfeit a sum not exceeding two hundred dollars; and if not able to pay said sum, he shall suffer six months' imprisonment.

93. All expenses incurred on account of any person, vessel, or goods, under quarantine regulations, shall be paid by such person or the owner of such vessel or goods respectively.

The owner of a vessel under quarantine regulations is not liable for the expenses of a seaman at a hospital, to which he had been transferred by order of the board of health of a town, and which was under their care.

Inhabitants of Provincetown v. Smith, 120 Mass. 96.

DOGS; HYDROPHOBIA.

94. Every license issued to the owner of a dog shall have printed thereon a description of the disease in dogs known as hydrophobia, said description to be supplied by the secretary of the state board of health to the clerks of the several cities and towns upon application therefor.

Public Statutes,
c. 112, § 32.

OFFENSIVE TRADES.

95. The board of health of a town shall from time to time assign certain places for the exercise of any trade or employment which is a nuisance or hurtful to the inhabitants, or dangerous to the public health, or the exercise of which is attended by noisome and injurious odors, or is otherwise injurious to their estates, and may prohibit the exercise of such trade or employment in places not so assigned; the board may also forbid such exercise within the limits of the town or in any particular locality thereof. All such assignments shall be entered in the records of the town, and may be revoked when the board shall think proper.

Board to assign
places for exer-
cising offensive
trades: and
may prohibit
them.
Public Statutes,
c. 30, § 54.

1692.

So far as this section extends, the rules and course of proceeding under the common law are superseded, but in all other respects it continues in force as before. If the board of health acts and assigns places in which any particular trade or employment may be carried on, such an assignment would undoubtedly legalize the occupation of any person conducting his business in that place, and he would then be liable to no process, suit or prosecution, other than those which are specially appointed and prescribed. But if no such assignment has been made, and the board, in the exercise of their discretion, have not seen fit to act at all, a remedy for injuries to the public or for violation of private rights by the permanent maintenance of offensive trades and employments must be found in the rules and principles of the common law. The statute, by leaving that body to act according to the discretion of its members, has imposed no duty upon them which they are imperatively bound to perform, and no means have been provided by a recourse to which, as by a complaint made to them, they can be compelled to exercise the power with which they are intrusted.

Commonwealth v. Rumford Chemical Works, 16 Gray, 231.

The board may pass an order prohibiting the exercise of an offensive trade, without having given previous notice to parties interested.

Belcher v. Farrar, 8 Allen, 327.

In the above case, Bigelow, C. J., says: "If, as preliminary to the exercise of any jurisdiction over the subject-matter, the selectmen were required to give notice to all persons exercising offensive trades or employments within the limits of the town, of their intention to prohibit the continuance of them, it would follow necessarily that such persons would have a right to appear and object, and ask for a hearing and trial on the question whether the use of their property was hateful or noxious, so as to fall within any of the classes contemplated by the statute. This would often lead to protracted examinations, which might occupy days or weeks. If, in the mean time, the alleged offensive and noisome trades might be carried on great injury to health might be occasioned; and it would be impossible to prevent the evils which it was the manifest object of the statute promptly to suppress."

It is questionable whether the prohibition of offensive trades is a proper subject of a by-law or ordinance, because that matter is specially provided for by statute; and to prohibit their exercise in any particular locality in a town or city by by-law or ordinance would interfere with the right of appeal to a jury which the statute secures.

Commonwealth v. Patch, 97 Mass. 223.

The keeping of swine cannot be considered a trade within the meaning of the law, and would be a proper subject of a by-law or ordinance.

Commonwealth v. Patch, 97 Mass. 223; but see 135 Mass. 526.

An order of the board under this section is not in the nature of an adjudication of a particular case, but of a general regulation of the trade or employment mentioned therein. It is not to be construed with technical strictness, but with the same liberality as all votes and proceedings of municipal bodies or officers who are not presumed to be versed in the forms of law; and every reasonable presumption is to be made in its favor. It need not state in direct terms that the trade which it prohibits is a nuisance. It is sufficient if the order clearly shows, that, in the opinion of the board, the exercise of such trade will be hurtful to the inhabitants, or injurious to the public health, or be attended by noisome and injurious odors.

Taunton v. Taylor, 116 Mass. 261.

A board of health of a town in 1881 made a regulation which provided that no swine should be kept in any place in the town, without a permit being first obtained from the board. On a complaint against a person for violation of this regulation, it appeared that the defendant kept about a hundred and fifty swine, and had been engaged for years in the business of feeding offal to swine. *Held*, that such a keeping of swine was an "employment," and that the authority of the board to regulate the same was under the Pub. Stats., chap. 80, sect. 84 (Gen. Stats., chap. 26, sect. 52), and not under sect. 18 (5); that the defendant was entitled to notice under sect. 87 (55); and that a publication under sect. 19 (6) was not sufficient.

Commonwealth v. Young, 135 Mass. 526.

The following order of a board of health was held to be a valid exercise of the power conferred upon boards of health:—

“Ordered, that the exercise of the trade or employment of preparing tripe, manufacturing neat's-foot oil, tallow and glue stock, and the boiling and trying of bones, hoofs, heads, refuse, and partially decayed animal matter, and as a part of such trade or employment, the storing about the premises where such business is carried on, of putrid meats, bones, heads, legs, and the various other materials from which offensive smells emanate, which are used in such trade or employment, be and the same hereby is forbidden within the limits of the city of Taunton.”

Taunton v. Taylor, 116 Mass. 261.

A board of health may regulate as well as prohibit the exercise of offensive trades.

Sawyer v. State Board of Health, 125 Mass. 195.

The same power by this section is given to the boards of health of towns and cities as is given by sect. 93, chap. 80, Pub. Stats., to the state board of health. The only difference is this, that by sect. 93 the state board is bound to give notice to a party, and allow him a hearing before it can pass an order of prohibition; but under this section the local boards may pass an order of prohibition without any previous notice.

Sawyer v. State Board of Health, 125 Mass. 191

96. When it appears on a trial before the superior court for the county, upon a complaint made by any person, that a place or building so assigned has become a nuisance, by reason of offensive smells or exhalations proceeding from the same, or is otherwise hurtful or dangerous to the neighborhood or to travellers, the court may revoke such assignment and prohibit the further use of such place or building for the exercise of either of the aforesaid trades or employments, and may cause such nuisance to be removed or prevented.

Superior court on complaint may revoke such assignment. Public Statutes, c. 80, § 85.

1710.

97. A person injured either in his comfort or the enjoyment of his estate by such nuisance may have an action of tort for the damage sustained thereby.

Action for damages from nuisance. Public Statutes, c. 80, § 86.

1799.

98. Orders of prohibition shall be served upon the occupant or person having charge of the premises where such trade or employment is exercised. If the party upon whom such order is served for twenty-four hours after such service refuses or neglects to obey the same, the

Orders of prohibition, etc., to be served on occupant. If he refuses to obey, board may prevent. Penalty. Public Statutes, c. 80, § 87.

board shall take all necessary measures to prevent such exercise ; and the person so refusing or neglecting shall forfeit not less than fifty nor more than five hundred dollars.

A notice ordered by the board and duly received is sufficiently served. It need not necessarily be served by a constable or other officer.

Winthrop v. Farrar, 11 Allen, 398.

The supreme judicial court has authority under its general jurisdiction as a court of equity to restrain by injunction the carrying on of an offensive trade which has been prohibited by a board of health. But the board must act in good faith towards the parties interested, and if by their action they have misled them and put them in a position to prevent their availing themselves of their right to appeal, and by reason thereof they have lost their opportunity to appeal, the court will refuse to enforce the orders of the board by a process in equity.

Winthrop v. Farrar, 11 Allen, 402.

A bill in equity to restrain a party from exercising an offensive trade or employment prohibited by the board of health of a city is properly brought in the name of the city and properly signed by the mayor.

Taunton v. Taylor, 116 Mass. 262.

Appeal by person aggrieved.
Public Statutes,
c. 80, § 88.
1883, 133, § 1.

99. Any person aggrieved by an order may appeal therefrom, and shall within three days from the service thereof upon him apply to the superior court, if in session in the county where the premises are located with reference to which such order is made, or in vacation to a justice of said court, for a jury ; and such court or justice shall issue a warrant for a jury, to be impanelled at a time and place expressed in the warrant, in the manner provided in regard to the laying out of highways. If a person by mistake of law or fact or by accident fails to appeal from any such order, and to apply to the superior court or a justice thereof for a jury within said three days, and if he makes it appear to the court or justice that such failure was caused by mistake or accident, he may at any time within thirty days from the service of the order upon him appeal therefrom and apply for a jury with the same effect as if done within the said three days.

Trade not to be exercised
meanwhile.
Public Statutes,
c. 80, § 89.

100. During the pendency of the appeal such trade or employment shall not be exercised contrary to the order ;

and upon any violation of the order the appeal shall forthwith be dismissed.

The statute giving to boards of health the power to forbid the exercise, within the limits of a town or city, or in any particular locality thereof, of any trade or employment which is a nuisance or hurtful to the inhabitants or dangerous to the public health, or the exercise of which is attended by noisome and injurious odors or is otherwise injurious to their estates, and providing for an appeal, and that during the pendency of the appeal such trade or employment shall not be exercised contrary to the order, is within the authority of the legislature and constitutional.

Taunton v. Taylor, 116 Mass. 260.

In Taunton v. Taylor, 116 Mass. 260, Gray, C. J., says: "To allow the offensive trade to be carried on until it had been decided by a jury to be a nuisance, and the questions of law arising upon such a trial had been determined by the court, would defeat the purpose of the statute. It is a case in which private rights must be held subordinate to the public welfare, and falls within the strictest interpretation of the maxim, *Salus populi suprema lex*."

"The rights of any person to be affected by the order of prohibition are reasonably secured by requiring the order to be served upon him or the person in charge of his business, and by allowing him an appeal to a jury to be impanelled immediately without waiting for a regular term of court, and by whose verdict the order may be altered, annulled or affirmed."

Taunton v. Taylor, 116 Mass. 260.

101. The verdict of the jury, which may either alter the order, or affirm or annul it in full, shall be returned to the court for acceptance as in case of highways; and said verdict when accepted shall have the authority and effect of an original order from which no appeal had been taken.

Verdict of jury may alter, etc., order; to be returned for acceptance. Public Statutes, c. 80, § 90.

The following order was issued by the state board of health:—

COMMONWEALTH OF MASSACHUSETTS.

STATE BOARD OF HEALTH, BOSTON, April 5, 1876.

TO GEORGE A. SAWYER of the town of Watertown, in the county of Middlesex.

You are hereby notified, that at a meeting of the state board of health, held at Boston, in the county of Suffolk, on the third day of April, 1876, it was ordered, on the petition of W. H. Ingraham and four others, and after a hearing of the parties, that George A. Sawyer of Watertown be, and he hereby is, directed to discontinue the business of slaughtering and rendering on the premises now occupied by him, on and after the fifteenth day of May, 1876. And it is adjudged and determined by this board, that the premises are noxious

and offensive, and that the public health and the public comfort and convenience require that the said George A. Sawyer be ordered, as aforesaid, to cease and desist from carrying on the said business on the said premises, on and after the fifteenth day of May, 1876. And you are hereby directed to comply in all respects with the requirements of the said order, under penalty of what may follow thereon.

An appeal was taken to a jury of the superior court. The case was then tried in the superior court, and the jury returned the following verdict and special findings:—

"The jury alter the order of the state board of health, dated April 5, 1876, as follows: That Mr. George A. Sawyer shall be permitted to continue the business of slaughtering animals on the premises now occupied by him in the town of Watertown, under the restrictions as per appended sheet.

"1. Mr. George A. Sawyer shall be required to concrete the cellar under his slaughter-house, in concave form.

"2. Mr. Sawyer shall not keep swine in or under his slaughter-house.

"3. All offal and offensive matter shall be removed from the above premises before ten o'clock P. M. of the day of killing, in covered, water-tight boxes or tanks.

"4. Said premises shall be kept at all times in a condition of neatness and cleanliness acceptable to the local board of health."

Held, that the several findings of the jury were sufficiently clear, precise, and definite in matters of form, and were proper in substance.

Sawyer v. State Board of Health, 125 Mass. 196.

Where an appeal is taken and trial had before a sheriff's jury, if the defendant is dissatisfied with the verdict, his remedy is, by application to the superior court, to set it aside, and, if aggrieved by any ruling of that court in matter of law, by bringing the question before the supreme court on exceptions or appeal.

Taunton v. Taylor, 116 Mass. 262.

Costs, how assessed, and to what amount. Public Statutes, c. 80, § 91.

102. If the order is affirmed by the verdict, the town shall recover costs against the appellant; if it is annulled, the appellant shall recover damages and costs against the town; and if it is altered, the court may render such judgment as to costs as in its discretion may seem just.

Slaughter-houses, etc., not to be used without leave. Penalty. Public Statutes, c. 80, § 92.

103. Whoever occupies or uses a building for carrying on therein the business of slaughtering cattle, sheep or other animals, or for a melting or rendering establishment, or for other noxious or offensive trades and occupations, or permits or allows said trades or occupations to be carried on upon premises owned or occupied by him, without first obtaining the written consent and permission of the mayor and aldermen of the city or selectmen of the town

in which the building or premises are situated, shall forfeit a sum not exceeding two hundred dollars for every month he so occupies or uses such building or premises, and in like proportion for a longer or shorter time : *provided*, that this section shall not apply to any building or premises occupied or used for the trades or occupations before described on the eighth day of May in the year eighteen hundred and seventy-one ; but no person occupying or using any building or premises on said date for the trades or occupations aforesaid shall enlarge or extend the same without first obtaining the written consent and permission of the mayor and aldermen or selectmen.

The above section is constitutional and valid as a police regulation.
Watertown v. Mayo, 109 Mass. 318.

Where a person before the passage of the above statute used and occupied a building on his own land as a slaughter-house, and therein slaughtered cattle, sheep and other animals, as a business, and after the passage of the statute he continued the business of slaughtering in said building, when the same caught fire accidentally, and was consumed, and afterwards he immediately rebuilt said slaughter-house on the same site, and continued his business of slaughtering cattle, sheep and other animals therein, and it further appeared that the new building was different from the old one in its construction and arrangement, but was not larger or more extensive in size or capacity, the court held that the right to continue, without license, the same business in the building was not forfeited, and that the building was within the exception stated in the section.

Watertown v. Sawyer, 109 Mass. 320.

The manifest purpose of the legislature is to protect the business already established, in the place where it is carried on, not the identical building which happened to be standing for its use when the law was enacted.

Watertown v. Sawyer, 109 Mass. 320.

A person was the owner of land and buildings used for a long period for a melting and rendering establishment and for the manufacture of soap in Somerville, a city containing more than four thousand inhabitants. In this rendering business he made use of two open kettles ; but the building in which they were placed did not cover the entire lot of land. In the year 1872 he tore down a part of his buildings, which were old and dilapidated, and, without consent or permission from the mayor and aldermen of Somerville, erected a new building, standing partly on land covered by the old buildings and

partly on land that had not been so covered. The new building covered about one-third as much space as the old buildings, and was two stories high with a French roof, while the old buildings were, for the most part, only one story in height. The owner's purpose was to place in that part of the new building formerly covered by the old one a covered kettle or tank for melting and rendering purposes, and to use the residue of the building for storage and other purposes connected with his business, and to tear down and discontinue the use of the old buildings and of the two open kettles. The capacity of the proposed new tank for rendering purposes would not exceed, and might not equal, that of the two open kettles. The old buildings were standing and in use, except so far as displaced by the new building.

Upon these facts the court held that it did not appear that the defendant had enlarged the premises occupied by him for the business in question, or that he had increased or purposed to increase the business, and refused to issue an injunction restraining him from so enlarging and extending them.

Somerville v. O'Neil, 114 Mass. 353.

State board may prohibit offensive trades. Penalty. Public Statutes, c. 80, § 93.

104. When any building or premises are so occupied or used, the state board of health shall, upon application made to it for that purpose, appoint a time and place for hearing the parties, and give due notice thereof to the party against whom the application is made, and after such notice and hearing may, if in its judgment the public health or the public comfort and convenience so require, order any person to desist and cease from further carrying on said trades or occupations in such building or premises; and any person thereafter continuing so to occupy or use such building or premises shall forfeit a sum not exceeding two hundred dollars for every month of such occupancy and use, and in like proportion for a longer or shorter time.

Precisely the same power is given by sect. 84, chap. 80 of the Public Statutes, to the local boards of health, as by this section is given to the state board. The only difference is this, that the state board is bound to give notice to a party, and allow him a hearing, before it can pass an order of prohibition; but the local boards may pass an order of prohibition without any previous notice.

Sawyer v. State Board of Health, 125 Mass. 191.

The same right to appeal to a jury from an order of the state board exists as is provided for an appeal from an order of a local board under sect. 84.

Sawyer v. State Board of Health, 125 Mass. 191.

105. The supreme judicial court in term time or vacation may issue an injunction to prevent the occupancy, use, enlargement, or extension of any building or premises occupied or used for the trades or occupations aforesaid, without the written consent and permission being first obtained; and also in like manner to enforce the orders of the state board issued under the preceding section.

Injunction to prevent offensive trades.
Public Statutes,
c. 80, § 94.

A bill in equity to restrain by injunction a person from occupying and using a building for carrying on the business of slaughtering cattle, sheep or other animals, without the written consent of the selectmen, is properly brought in the name of the inhabitants of the town.

Inhabitants of Watertown v. Mayo, 109 Mass. 315.

106. The three preceding sections shall not be so construed as to impair any other remedies which may exist in cases of nuisance.

Other remedies not impaired by preceding provisions.
Public Statutes,
c. 80, § 95.

SWINE-SLAUGHTERING ASSOCIATIONS.

107. Three or more persons who associate themselves together by such an agreement in writing as is described in section sixteen of chapter one hundred and six of the Public Statutes, with a capital of not less than one hundred thousand nor more than five hundred thousand dollars, with the intention of forming a corporation for the purpose of buying and slaughtering swine and of melting and rendering and pork-packing, upon complying with the provisions of section twenty-one of said chapter shall be and remain a corporation, with all the powers, rights and privileges, and subject to all the duties, limitations, and restrictions, contained in said chapter, except as hereinafter provided.

Corporations may be formed for buying and slaughtering swine, etc.
Public Statutes,
c. 107, § 1.

108. Such corporation may take and hold by purchase or otherwise such parcel of land, not exceeding one hundred acres in extent, and situated in such place, as the state board of health may determine to be suitable for said business; and shall, within sixty days from the time of taking any land otherwise than by purchase, cause to be signed by its president and filed in the registry of deeds

May take land, with approval of state board of health; to file a description in registry of deeds.
Public Statutes,
c. 107, § 2.

for the county or district wherein said lands lie a description thereof as certain as is required in a common conveyance of lands and a statement of the purpose for which the lands are taken ; but no land shall be so taken without the approval in writing of the mayor and aldermen of the city or of the selectmen of the town in which it is situated.

Liability for
damages.
Trial by jury.
Public Statutes,
c. 107, § 3.

109. Such corporation shall be liable to pay all damages sustained by any persons in their property by the taking of any land for the purposes of this chapter. A person sustaining damages as aforesaid, and not agreeing upon the sum to be paid therefor, may apply by petition for the assessment of his damages, at any time within one year from the taking of said land, to the superior court in the county in which said land is situate ; such petition may be filed in the clerk's office of said court in vacation or in term time, and the clerk shall thereupon issue a summons to the corporation, returnable, if issued in vacation, to the then next term of the said court, held fourteen days at least after the issuing of said summons, and, if in term time, returnable on such day as the court shall order, to appear and answer to the said petition ; the said summons shall be served fourteen days at least before the return day thereof by leaving a copy thereof with the clerk of the corporation, and upon the return of said summons, duly served, the said petition shall stand as a cause in said court ; and upon said petition all questions of fact relating to the damages sustained by the petitioner shall be heard and determined, and the amount of such damages shall be assessed by a jury, unless the parties in writing waive their right to a jury, and agree that the same shall be determined by the court ; and the verdict of said jury, being accepted and recorded by the court, or the award of the court if jury trial is waived, shall be final and conclusive, and judgment shall be rendered and execution issued thereon ; and costs shall be recovered by the petitioner if the amount of said judgment exceeds the

amount offered him for his damage before the filing of said petition, otherwise the corporation shall recover its costs.

110. Such corporation shall proceed to build upon such land, suitable buildings for the slaughtering of swine and for melting and rendering, and all necessary stables and out-buildings. No such building shall be erected until the plans thereof, with all details of construction, have been submitted to and approved by said state board, or some person designated by it to examine them. The corporation shall carry on all its business in accordance with such regulations as said state board shall, from time to time, establish and furnish in writing to the clerk of the corporation; and for each violation of said regulations, it shall forfeit not less than twenty nor more than five hundred dollars.

To build suitable buildings; regulations by state board. Public Statutes, c. 107, § 4.

111. Subject to the foregoing provisions, such corporation may manufacture and sell any of the usual products of said slaughtering and melting and rendering business, or may lease or permit other persons to use their buildings or parts thereof, on such terms as may be agreed upon. Each member of the corporation may slaughter swine on said premises, subject to such regulations and tariff of prices as the corporation may by vote at any regular meeting establish, and to the regulations of the said state board. A person engaged in business on the premises of such corporation, who violates any regulations of said state board, shall forfeit not less than twenty nor more than five hundred dollars.

Such corporation may carry on slaughtering business. Each member may slaughter on premises. Public Statutes, c. 107, § 5.

POLLUTION OF RIVERS AND SOURCES OF WATER AND ICE SUPPLIES.

112. No sewage, drainage, or refuse or polluting matter, of such kind and amount as either by itself or in connection with other matter will corrupt or impair the quality of the water of any pond or stream hereinafter referred to, for domestic use, or render it injurious to health, and no

Sources of water supply not to be polluted. Public Statutes, c. 80, § 90.

human excrement, shall be discharged into any pond used as a source of water-supply by a city or town, or upon whose banks any filter basin so used is situated, or into any stream so used, or upon whose banks such filter basin is situated, within twenty miles above the point where such supply is taken, or into any feeders of such pond or stream within such twenty miles.

Certain rights not to be impaired. Prohibition not applicable to certain rivers. Public Statutes, c. 80, § 97.

113. The preceding section shall not be construed to destroy or impair rights acquired by legislative grant prior to the first day of July in the year eighteen hundred and seventy-eight, or to destroy or impair prescriptive rights of drainage or discharge, to the extent to which they lawfully existed on that date; and nothing therein contained shall be construed to authorize the pollution of any waters in this commonwealth, in any manner contrary to law; nor shall it be applicable to the Merrimack or Connecticut Rivers, or to so much of the Concord River as lies within the limits of the city of Lowell. The supreme judicial or superior court, in term time or vacation, upon the application of the mayor of a city or the selectmen of a town interested, may grant an injunction against any violation of the provisions of section ninety-six of chapter eighty of the Public Statutes.

Supreme or superior court may grant an injunction against a violation of chap. 86, 1884, 154, § 1.

If a pond and the waters of a stream running into the pond are taken for the purpose of supplying a city with pure water, it is no defence to a petition in equity, under the Statutes of 1884, chap. 154, for an injunction to restrain a person from polluting the stream, that the city has, by means of a dike, prevented the waters of the stream from running into and polluting the waters of the pond.

Martin v. Gleason, 139 Mass. 183.

Corrupting spring, etc., or injuring aqueduct. Public Statutes, c. 208, § 7.

114. Whoever wilfully or maliciously defiles, corrupts, or makes impure any spring, or other source of water, or reservoir, or destroys or injures any pipe, conductor of water, or other property pertaining to an aqueduct, or aids or abets in any such trespass, shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the jail not exceeding one year.

Sources of domestic water supply.
Public Statutes, c. 208, § 8.

A land owner may collect the surface water of his land, and the water drawn from wells therein, into an artificial stream, and discharge this stream into a natural watercourse running through his land, provided that this is done in the reasonable use of his land, and that the volume of water is not increased beyond the natural capacity of the watercourse to discharge it, and the land of an adjoining owner is not thereby overflowed and materially injured.

• **Jackman v. Arlington Mills, 137 Mass. 277.**

**Bathing in
water-supply
prohibited.
Penalty.
1884, 172.**

Penalty for driving horse on ice of pond used for water-supply, etc. Public Statutes, c. 80, § 101.

117. Whoever drives a horse on the ice on a pond, the water of which is used for the purpose of domestic water-supply for a city or town, shall be punished by fine not exceeding fifty dollars, or imprisonment not exceeding thirty days.

Exception to above. Public Statutes, c. 80, § 102.

118. The preceding section shall not apply to persons engaged in cutting or harvesting ice from such ponds, or in hauling logs, wood, or lumber.

Complaint of sale of impure ice. State board may hear parties interested. 1886, 287, § 1.

119. Upon complaint in writing of not less than twenty-five consumers of ice which is cut, sold, and held for sale from any pond or stream in this Commonwealth, alleging that said ice is impure and injurious to health, the state board of health may appoint a time and place for hearing parties to be affected and give due notice thereof to such parties, and after such hearing said board may make such orders concerning the sale of said ice as in its judgment the public health requires.

Injunction may be issued by supreme court. 1886, 287, § 2.

120. The supreme judicial court in term time or vacation may issue an injunction to enforce such orders of the state board.

Parties may have right of appeal to a jury. 1886, 287, § 3.

121. Such orders of the state board of health shall be served upon any person or persons who are or have been selling said impure ice, and any party aggrieved thereby shall have the right of appeal to a jury and be subject to the provisions of sections eighty-eight, eighty-nine and ninety of chapter eighty of the Public Statutes, and the court may render such judgment as to costs as in its discretion may seem just.

Water boards, etc., to make triennial returns to state board. Public Statutes, c. 80, § 103.

122. Water boards, water commissioners, and water companies making use, as a source of water-supply, of any pond, stream, reservoir, or well, within the Commonwealth, and distributing the waters thereof for public, domestic, and general uses, shall make returns to the state board on or before the first day of November in every third year, beginning with the year eighteen hundred and eighty-two, of the facts hereinafter enumerated: *provided*, that the expense incurred by any such board, commissioners, or

YANBU: 1886

company, shall not exceed fifty dollars. And the state board shall publish triennially, in its report to the legislature, the returns received, arranged by counties separately, and those from each county alphabetically.

123. Each of such water boards, commissioners, and companies shall state in the proper places on the blanks which the state board shall, on application, furnish for the purpose, —

Form of return.
Public Statutes,
c. 80, § 104.

1. Its name, charter, or other legal basis, and place of business.
2. The source or sources of its water-supply, and the name, if any, and location of each.
3. The superficial area of its water-surface, if pond, reservoir, or large well.
4. The area of watershed supplying such source or sources.
5. The general geological and topographical character of the watershed.
6. The estimated capacity of each such source by average daily flow.
7. The estimated capacity of each such source by minimum daily flow.
8. Whether the watershed is also wholly or in part that of other ponds, streams, or reservoirs, besides that used by the party making return; and if so, to what extent.
9. Whether or not the source employed by the party making return is used jointly by some other party for a water-source; and if so, by whom.
10. Whether there are other sources within ten miles, not already appropriated by law, that could be availed of in connection with the source or sources now enjoyed by the party making return; and if so, what, and their location, area, watershed, and the means necessary to connect, with the distance from present source, and from territory to be supplied.
11. What danger of contamination the waters at present held are liable to.
12. Whether or not an analysis has been made of the water at present used, and the results of any such; by whom, and where.
13. Whether the waters at present used have been stocked with fish; if so, to what extent, by whom and where.
14. What, up to date, has been the cost of the water-works in use, including rights and lands taken, and all damages paid; stating cost of water-rights separately, and to whom paid.
15. Whether the storage capacity of the present source can be increased, and at what probable cost, exclusive of damage by flowing, and at what damage to private parties or corporations.

16. Whether any town, village, or city discharges its sewers or drains into the source used by the returning party, or their tributaries.
17. The population of the town, city, or village so discharging its sewers or drains into said source, and the character of its manufactures.
18. The apparent results of such sewage.
19. The average daily consumption for the year of the population supplied by the party making return.
20. The per centum used by families.
21. The average consumption per family, per day.
22. The probable increase of demand, as near as can be estimated for the next year.
23. The water rates established.
24. The system of distribution, whether by gravity, stand-pipe, direct pumping, reservoir, or otherwise.
25. The condition of water debt and sinking fund.
26. How the effluent water is now got rid of.
27. Into what stream or body of water it finally flows.
28. What protection against impurity of present source not now provided is desired.
29. What additional expense such protection would involve, and to whom.

State board to furnish blanks. Penalty for neglect to make returns. State board to prosecute. Public Statutes, c. 80, § 105.

124. The state board shall, on application from the parties who are required to make said returns, furnish the requisite blanks therefor; and any water board, commissioners, or company required to make said returns shall for every neglect or failure so to do, forfeit fifty dollars to the use of the local board of health, or the proper officers acting as such, of the city or town in which such delinquent has its principal office. And the state board shall prosecute, by an action of tort in the name of the Commonwealth, for the recovery of the penalty or forfeit herein imposed.

GENERAL PROVISION.

Chapter extends to cities. Public Statutes, c. 80, § 106.

125. The provisions of this chapter (c. 80, Public Statutes) extend to cities so far as the same are not inconsistent with their several charters or acts in amendment thereof.

State board to have supervision of inland waters. May employ engineers and clerks. Shall report its doings. Shall

126. The state board of health shall have the general oversight and care of all inland waters, and shall be furnished with maps, plans and documents suitable for this purpose, and records of all its doings in relation thereto

shall be kept. It may employ such engineers and clerks and other assistants as it may deem necessary : *provided*, that no contracts or other acts which involve the payment of money from the treasury of the Commonwealth shall be made or done without an appropriation expressly made therefor by the general court. It shall annually, on or before the tenth day of January, report to the general court its doings in the preceding year, and at the same time submit estimates of the sums required to meet the expenses of said board in relation to the care and oversight of inland waters for the ensuing year ; and it shall also recommend legislation and suitable plans for such systems of main sewers as it may deem necessary for the preservation of the public health and for the purification and prevention of pollution of the ponds, streams and inland waters of the Commonwealth.

recommend
legislation and
plans.
1886, 274, § 1.

127. Said board shall from time to time as it may deem expedient, cause examinations of the said waters to be made for the purpose of ascertaining whether the same are adapted for use as sources of domestic water supplies or are in a condition likely to impair the interests of the public or persons lawfully using the same, or imperil the public health. It shall recommend measures for prevention of the pollution of such waters and for removal of substances and causes of every kind which may be liable to cause pollution thereof, in order to protect and develop the rights and property of the Commonwealth therein and to protect the public health. It shall have authority to conduct experiments to determine the best practicable methods of purification of drainage or disposal of refuse arising from manufacturing and other industrial establishments. For the purposes aforesaid it may employ such expert assistance as may be necessary.

State board
shall examine
inland waters
as to their qual-
ity for domestic
use, recommend
measures to pre-
vent pollution
and conduct
experiments.
May employ
experts.
1886, 274, § 2.

128. It shall from time to time consult with and advise the authorities of cities and towns, or with corporations, firms or individuals either already having or intending to introduce systems of water supply or sewerage, as to the

Shall consult
with the
authorities of
cities and towns
as to introduc-
tion of water-
supplies and
sewerage.

Shall consult with and advise corporations as to sewage disposal. Authorities and corporations to submit plans to the board. Board shall bring cases of neglect to notice of attorney-general and report to legislature. 1886, 274, § 3.

most appropriate source of supply, the best practicable method of assuring the purity thereof or of disposing of their sewage, having regard to the present and prospective needs and interests of other cities, towns, corporations, firms or individuals which may be affected thereby. It shall also from time to time consult with and advise persons or corporations engaged or intending to engage in any manufacturing or other business, drainage or refuse from which may tend to cause the pollution of any inland water, as to the best practicable method of preventing such pollution by the interception, disposal or purification of such drainage or refuse: *provided*, that no person shall be compelled to bear the expense of such consultation or advice, or of experiments made for the purposes of this act. All such authorities, corporations, firms and individuals are hereby required to give notice to said board of their intentions in the premises, and to submit for its advice outlines of their proposed plans or schemes in relation to water supply and disposal of drainage and refuse. Said board shall bring to the notice of the attorney-general all instances which may come to its knowledge of omission to comply with existing laws respecting the pollution of water supplies and inland waters and shall annually report to the legislature any specific cases not covered by the provisions of existing laws, which in its opinion call for further legislation.

CEMETERIES, BURIALS, AND REMOVAL OR TRANSPORTATION OF BODIES.

Lots to be indivisible, but inheritable. Representative of, how designated. Public Statutes, c. 82, § 3.

129. Lots in cemeteries shall be held indivisible, and upon the decease of a proprietor, his heirs at law, or the devisees of such lot if devised, shall succeed to his privileges. If there is more than one heir or devisee, they shall within nine months from such decease designate in writing to the clerk of the corporation which of their number shall represent the lot; and on their failure so to designate, the board of trustees or directors of the corpo-

ration shall enter of record which of said heirs or devisees shall represent the lot while such failure continues.

130. The preceding section shall apply to all tombs in public cemeteries in cities, and the boards of health in cities shall exercise, in regard to such tombs, the powers granted by said section to trustees or directors of cemetery corporations.

Provisions of preceding section to apply to tombs in public cemeteries in cities, etc. Public Statutes, c. 82, § 4.

131. Boards of health of cities and towns may prohibit the use by undertakers, for the purpose of speculation, of tombs as places of deposit for bodies committed to them for burial; may, if in their opinion the public health requires it, close any tomb, burial ground, cemetery or other place of burial within the city or town, for such length of time as they may deem necessary for the protection of the public health; may make all regulations which they judge necessary concerning burial grounds and interments within their respective limits, and may establish penalties not exceeding one hundred dollars for any breach of such regulations.

Boards of health may make regulations. Public Statutes, c. 82, § 19. 1885, 278, § 1.

1816.

The powers given to boards of health are large and general to make regulations for the interment of the dead and respecting burying-grounds.

Withington v. Inhabitants of Harvard, 8 Cush. 68.

This section is not confined in its operation to acts done within the burial-grounds. The word "interments" properly includes and describes the removal of the bodies of deceased persons for the purpose of burial.

That this necessary duty shall be performed, especially when undertaken for hire, by suitable and trustworthy persons, and that the moving of dead bodies through the public streets shall be conducted with decency and safety, are obviously matters proper for municipal regulation, and which, as well as the mode of burial, may concern the public health to no slight extent.

Commonwealth v. Goodrich, 13 Allen, 546.

The board of health of a city may establish a regulation prohibiting any person, unless appointed an undertaker or otherwise authorized by the board of health, from moving from any house or other place in the city to any place of burial the body of any deceased person, and making it the duty of undertakers to attend funerals when required, and to collect and pay over the burial fees, and requiring, further, each undertaker to give bonds in the sum of two hundred dollars.

The refusal or neglect of a person appointed an undertaker to give the bond required by the regulation would justify the revocation of his appointment without any previous notice to him.

Commonwealth v. Goodrich, 13 Allen, 546.

Boards of health to give notice of regulations.
Public Statutes, c. 82, § 20.

1816.

Penalty for interments in violation of section eighteen.
Public Statutes, c. 82, § 21.

132. Notice of such regulations shall be given by publishing the same in some newspaper of the city or town or, if there is no such newspaper, by posting a copy in some public place therein; which shall be deemed legal notice to all persons.

133. For every interment in violation of section eighteen, chapter eighty-two of the Public Statutes, in a city or town in which the notice prescribed in the preceding section has been given, the owner of the land so used shall forfeit not less than twenty nor more than one hundred dollars.

Sect. 18 of chap. 82, Public Statutes, provides that, "Except in the case of the erection or use of a tomb on private land, for the exclusive use of the family of the owner, no land other than that already so used or appropriated shall be used for the purpose of burial, unless by permission of the town or of the mayor and aldermen of the city in which the same is situated."

Notice to be given before closing tombs, etc., by order of board.
Public Statutes, c. 82, § 22.

134. Before a tomb, burial ground, or cemetery is closed by order of such board of health for a time longer than one month, all persons interested shall have an opportunity to be heard, and personal notice of the time and place of hearing shall be given to at least one owner of the tomb, and to three at least, if so many there are, of the proprietors of such burial ground or cemetery, and notice shall also be published two successive weeks at least preceding such hearing, in two newspapers, if so many there are, published in the county.

Appeal from order of board.
Public Statutes, c. 82, § 23.

135. The owner of a tomb aggrieved by the order of the board of health closing a tomb, burial-ground, or cemetery, may appeal therefrom, and at any time within six months from the date of the order enter his appeal in the superior court; and the appellant shall give the board of health fourteen days' notice of his appeal previous to

the entry thereof. But the order of the board shall remain in force until a decision is had on the appeal.

136. Appeals shall be tried in regular course before a jury, and if the jury find that the tomb, burial ground or cemetery so closed was not a nuisance nor injurious to the public health at the time of the order, and that the closing thereof was not necessary for the protection of the public health, the court shall rescind such order so far as it affects such tomb, burial ground or cemetery; and execution for the costs of the appeal shall issue in favor of the appellant, against the city or town in which the same was situated. But if the order is sustained execution shall issue for double costs against the appellant in favor of the board of health for the use of the city or town.

To be tried by jury. Costs. Public Statutes, chap. 82, § 24. 1885, 273, § 2.

137. No human body shall be buried or removed from any city or town until a proper certificate has been given by the clerk or registrar to the undertaker, sexton, or other person performing the burial or removing the body. Such certificate shall state that the facts required by chapter thirty-two of the Public Statutes have been returned and recorded; and no clerk or registrar shall give such certificate or burial permit until the certificate of the cause of death has been obtained from the physician, if any, in attendance at the last sickness of the deceased and placed in the hands of said clerk or registrar; and in cities and towns where there are boards of health, the certificate of the cause of death shall also be approved by such board before a permit to bury or remove is given by the registrar or clerk. Upon application, the chairman of the board of health, or any physician employed by any city or town for such purpose, shall sign the certificate of the cause of death to the best of his knowledge and belief, if there has been no physician in attendance. He shall also sign such certificate, upon application, in case of death by dangerous contagious disease, or in any other event when the certificate of the attending physician cannot for good and sufficient reasons be early enough obtained. In case of

Burial or removal of body not permitted until certificate has been given. Public Statutes, c. 32, § 5. 1883, 124.

death by violence, the medical examiner attending shall furnish the requisite medical certificate. Any person violating the provisions of this section shall be punished by fine not exceeding twenty five dollars.

Transportation
of bodies of per-
sons who have
died of infec-
tious disease.
Such bodies to
be so prepared
as to preclude
danger.
1883, 124, § 2.

138. No railroad corporation, or other common carrier or person, shall convey or cause to be conveyed, through or from any city or town in this Commonwealth, the remains of any person who has died of small-pox, scarlet fever, diphtheria, or typhoid fever, until such body has been so encased and prepared as to preclude any danger of communicating the disease to others by its transportation; and no local registrar or clerk shall give a permit for the removal of such body until he has received from the board of health of the city, or the selectmen of the town where the death occurred, a certificate, stating the cause of death, and that said body has been prepared in the manner set forth in this section, which certificate shall be delivered to the agent or person who receives the body.

Undertakers to
be licensed by
board of health.
Public Statutes,
c. 32, § 8.

139. The boards of health of towns and the mayor and aldermen of cities shall, on or before the first day of July in each year, license a suitable number of undertakers to take charge of the funeral rites preliminary to the interment of a human body.

Violation of
sepulture.
Public Statutes,
c. 207, § 47.

140. Whoever, not being authorized by the board of health, overseers of the poor, directors of a workhouse, or mayor and aldermen or selectmen of a city or town, or by the board of directors for public institutions or overseers of the poor of the city of Boston, wilfully digs up, disinters, removes, or conveys away a human body or the remains thereof, or knowingly aids in such disinterment, removal, or conveying away, and whoever is accessory thereto either before or after the fact, shall be punished by imprisonment in the state prison or jail not exceeding three years or by fine not exceeding two thousand dollars.

The removal of a dead body is not an offence within the meaning of the above statute, unless it is removed with the intent to use it or dispose of it for the purpose of dissection.

Commonwealth v. Slack, 19 Pick. 306.

CREMATION.

141. Any five or more persons may associate themselves together in the manner prescribed by chapter one hundred and six of the Public Statutes, with a capital of not less than six thousand, nor more than fifty thousand dollars, for the purpose of providing the necessary appliances and facilities for the proper disposal by incineration of the bodies of the dead; and corporations so established shall have the same powers and privileges and be subject to the same duties, liabilities and restrictions as other corporations established under said chapter, except as hereinafter provided. The par value of shares in the capital stock of corporations organized under the provisions of this act shall be either ten or fifty dollars.

Five or more persons may form a corporation for purpose of incinerating dead bodies. 1885, 265, § 1.

142. Every such corporation may acquire by gift, devise or purchase, and hold in fee simple so much real estate not exceeding in value fifty thousand dollars as may be necessary for carrying out the objects connected with and appropriate to the purposes of said corporation, and situated in such place as the state board of health may determine to be suitable for said objects and purposes. No building shall be erected, occupied or used by such corporation until the location and plans thereof, with all details of construction, have been submitted to and approved by said board or some person designated by it to examine them.

May hold real estate as approved by state board of health. 1885, 265, § 2.

143. Every such corporation may make by-laws and regulations consistent with law and subject to the approval of said state board, for the reception and cremation of bodies of deceased persons, and for the disposition of the ashes remaining therefrom, and shall carry on all its business in accordance with such regulations as said board shall from time to time establish and furnish in writing to the clerk of the corporation, and for each violation of said regulations, it shall forfeit not less than twenty nor more than five hundred dollars.

May make by-laws and rules subject to the approval of state board. 1885, 265, § 3.

No body to be cremated within 48 hours after death. Certificate of medical examiner required in addition to usual certificate. Fees of medical examiner. 1885, 265, § 4.

144. No body of a deceased person shall be cremated within forty-eight hours after decease, unless death was occasioned by contagious or infectious disease; and no body shall be received or cremated by said corporation until its officers have received the certificate or burial permit required by law before burial, together with a certificate from the medical examiner of the district within which the death occurred, that he has viewed the body and made personal inquiry into the cause and manner of death, and is of opinion that no further examination nor judicial inquiry concerning the same is necessary. For such view, inquiry and certificate he shall receive the fees prescribed by section nine of chapter twenty-six of the Public Statutes for a view without an autopsy by examiners in counties other than Suffolk County. Medical examiners within their respective districts shall make such view and inquiry upon application therefor and payment or tender of said fees.

CONTAGIOUS DISEASES AMONG CATTLE.

Animals with contagious diseases to be isolated, etc. Public Statutes, c. 90, § 1.

145. The mayor and aldermen of cities and the selectmen of towns, in case of the existence in this Commonwealth of the disease called pleuro-pneumonia among cattle, or farcy or glanders among horses, or any other contagious or infectious disease among domestic animals, shall cause the animals in their respective cities and towns, which are infected, or which have been exposed to infection, to be secured or collected in some suitable place or places within their cities or towns, and kept isolated; and, when taken from the possession of their owners, one-fifth of the expense of their maintenance shall be paid by the city or town wherein the animal is kept, and four-fifths by the Commonwealth; such isolation to continue so long as the existence of such disease or other circumstances may render it necessary.

May be killed. Public Statutes, c. 90, § 2.

146. The mayor and aldermen and selectmen respectively, when any such animal is adjudged by a veterinary

surgeon or physician by them selected to be infected with any contagious disease, may in their discretion order such diseased animal to be forthwith killed and buried at the expense of such city or town.

147. They may cause all such animals, except those infected with glanders or farcy, to be appraised by three competent and disinterested men, under oath, at the value thereof at the time of the appraisement, and the amount of the appraisement shall be paid as provided in section one; and they shall cause all animals infected with glanders or farcy to be killed without appraisement; but may pay the owner an equitable sum for his services in the killing, and for any reasonable expense incurred by the burial thereof.

Their value to be appraised, and how paid. Public Statutes, 1885, 148, § 3.

148. They may, within their respective cities and towns, prohibit the departure of animals from any enclosure, or exclude animals therefrom.

Animals may be kept isolated. Public Statutes, c. 90, § 4.

149. They may make regulations, in writing, to regulate or prohibit the passage from, to, or through their respective cities or towns, or from place to place within the same, of any cattle or other domestic animals, and may arrest and detain, at the cost of the owners thereof, all animals found passing in violation of such regulations, and may take all other necessary measures for the enforcement of such prohibition, and also for preventing the spread of any disease among the animals to their respective cities and towns, and the immediate vicinity thereof.

Passage of animals through towns may be regulated. Public Statutes, c. 90, § 5.

150. Such regulations shall be recorded upon the records of their cities and towns respectively, and shall be published in such cities and towns in such manner as may be provided in such regulations.

Regulations to be recorded, etc. Public Statutes, c. 90, § 6.

151. They may cause every animal infected with any such disease, or which has been exposed thereto, to be forthwith branded upon the rump with the letter P; and no animal so branded shall be sold or disposed of except with the knowledge and consent of such mayor and aldermen and selectmen. A person who, without such knowledge and consent, sells or disposes of an animal so branded,

Animals may be branded. Penalty for selling. Public Statutes, c. 90, § 7.

or sells or disposes of an animal known to be affected with such disease, or to have been exposed thereto within one year previous to such sale or disposal, shall be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding one year.

*Punish for
transmission of
disease. See
Public Statutes,
c. 90, § 9.*

152. Any person disobeying the orders of the mayor and aldermen or selectmen, made in conformity with the preceding provisions, or driving or transporting any animals contrary to the regulations made, recorded, and published as aforesaid, shall be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding one year.

*Owners suspect-
ing disease to
give notice.
Penalty.
Public Statutes,
c. 90, § 9.*

153. Whoever knows or has reason to suspect the existence of any such disease among the animals in his possession or under his care shall forthwith give notice thereof to the mayor and aldermen of the city or selectmen of the town where such animals are kept, and for failure so to do shall be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding one year.

*Punish on
towns for
neglect.
Public Statutes,
c. 90, § 10.*

154. A city or town whose officers neglect or refuse to carry into effect the preceding provisions shall forfeit a sum not exceeding five hundred dollars for each day's neglect.

*Lands may be
taken; dam-
ages; appeal.
Public Statutes,
c. 90, § 11.*

155. The mayor and aldermen of cities and selectmen of towns, when in their judgment it is necessary to carry into effect the purposes of this chapter, may, within their respective cities and towns, take and hold, for a term not exceeding one year, any land, without buildings other than barns thereon, upon which to enclose and isolate any animals; and they shall cause the damages sustained by the owner in consequence of such taking and holding to be appraised by the assessors of the city or town wherein the lands so taken are situated; and they shall further cause a description of such land, setting forth the boundaries thereof, and the area as nearly as may be estimated, together with said appraisement, to be entered on the records of the city or town. The amount of said appraise-

ment shall be paid as before provided, in such sums and at such times as the mayor and aldermen or selectmen respectively may order. If the owner of land so taken is dissatisfied with said appraisalment, he may by action of contract recover of the city or town wherein the lands lie a fair compensation for the damages sustained by him ; but no costs shall be taxed, unless the damages recovered in such action, exclusive of interest, exceed said appraisalment. And the Commonwealth shall reimburse to the city or town four-fifths of any sum recovered of it in any such action.

156. The governor, with the advice and consent of the council, shall appoint a board of cattle commissioners of not more than three members, whose term of office shall commence on the first day of October, eighteen hundred and eighty-five, and who shall hold office as follows :— One of said members for the term of three years, one for the term of two years, one for the term of one year, and thereafter one of said members shall be appointed annually for the term of three years. The compensation of such commissioners shall not exceed five dollars per day for actual service, in addition to their travelling expenses necessarily incurred. Any member of the board may be removed by the governor and council, and they may terminate the commissions of the entire board when in their judgment the public safety may permit. Vacancies in the board by the expirations of the terms of service or otherwise shall from time to time be filled by appointment by the governor with the consent of the council. The board of cattle commissioners as now constituted shall cease to exist on the thirtieth day of September, eighteen hundred and eighty-five, and the duties now devolving by law upon said board shall thereafter be performed by the board authorized by this act.

157. When such commissioners make and publish any regulations concerning the extirpation, cure, or treatment of animals infected with or which have been exposed to

Cattle commissioners to be appointed.
Term of office.
Compensation.
Removals.
Vacancies.
Duties.
1885, 278.

Regulations by commissioners to supersede those by selectmen.
Public Statutes, c. 50, § 12.

any contagious disease, such regulations shall supersede those made by mayors and aldermen and selectmen; and mayors and aldermen and selectmen shall carry out and enforce all orders and directions of the commissioners to them directed.

Hospital may be established.
Public Statutes,
c. 90, § 14.

158. Such commissioners shall have all the power and authority herein conferred upon mayors and aldermen and selectmen; and in addition may establish a hospital or quarantine with proper accommodations, wherein any cattle selected by them may be detained and treated by veterinary surgeons or physicians. And for this purpose the commissioners may take any land and buildings in the manner before provided.

Selectmen to notify commissioners.
Public Statutes,
c. 90, § 15.

159. Mayors and aldermen and selectmen, within twenty-four hours after they have notice that any domestic animals in their respective cities and towns are infected with or have been exposed to any such disease, shall give notice thereof in writing to the commissioners.

Commissioners may make regulations as to cattle.
Public Statutes,
c. 90, § 16.

160. The commissioners may make all necessary regulations for the treatment, cure, and extirpation of such disease, and may direct mayors and aldermen and selectmen respectively to enforce and carry into effect all such regulations as may from time to time be made for that end; and any such officer who refuses or neglects to enforce and carry out any regulation of the commissioners shall be punished by fine not exceeding five hundred dollars for every such offence.

May cause infected animals to be killed.
Public Statutes,
c. 90, § 17.

161. The commissioners, when in their judgment the public good requires it, may cause to be killed and buried any domestic animals which are infected with or have been exposed to such disease; and except as provided in the following section, shall cause such animals to be appraised in the manner provided above, and the appraised value of such animals shall be paid, one-fifth by the cities or towns in which such animals were kept, and the remainder by the Commonwealth.

162. In all cases of farcy or glanders, the commissioners, having condemned the animal infected therewith, shall cause such animal to be killed, without an appraisement, but may pay the owner an equitable sum for the killing and burial thereof.

Farcy and
glanders.
Public Statutes,
c. 90, § 18.

163. A person who fails to comply with a regulation made or an order given by the commissioners shall be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding one year.

Penalty.
Public Statutes,
c. 90, § 19.

164. Prosecutions under the preceding section may be maintained in any county.

Prosecutions
where main-
tained.
Public Statutes,
c. 90, § 20.

165. All appraisements made shall be in writing and signed by the appraisers and certified by the mayors and aldermen or selectmen or commissioners respectively, to the governor and council and to the treasurers of the several cities and towns wherein the cattle appraised were kept.

Appraisements.
Public Statutes,
c. 90, § 21.

166. The commissioners may examine under oath all persons believed to possess knowledge of material facts concerning the existence or dissemination or danger of dissemination of diseases among domestic animals; and for this purpose shall have all the powers vested in justices of the peace to take depositions and to compel witnesses to attend and testify by chapter one hundred and sixty-nine of the Public Statutes. All costs and expenses incurred in procuring the attendance of such witnesses shall be allowed and paid to the commissioners from the treasury of the Commonwealth, upon being certified to and approved by the governor and council.

Commissioners
may examine
persons.
Public Statutes,
c. 90, § 22.

167. Whenever animals exposed to contagious diseases are killed by order of the commissioners, and upon a post-mortem examination are found to have been entirely free from disease, the commissioners shall cause the same to be sold under their direction, first giving to the purchaser notice of the facts, and if the said purchaser or any other person shall sell said slaughtered animals or any part thereof, he shall in like manner give notice to the

May sell animals
killed when not
diseased.
Public Statutes,
c. 90, § 23.

parties to whom such sales are made; and the proceeds of the sales made by order of the commissioners shall be applied in payment of the appraised value of said animals.

Penalty.
Public Statutes,
c. 90, § 24.

168. Whoever violates any of the provisions of the preceding section shall be punished by fine not exceeding one hundred dollars and the costs of prosecution.

Commissioners to keep record and make report.
Public Statutes,
c. 90, § 25.

169. Cattle commissioners, now or hereafter appointed, shall keep a full record of their doings, and report the same to the legislature on or before the tenth day of January in each year, unless sooner required by the governor; and an abstract of the same shall be printed in the annual report of the state board of agriculture.

Commissioners shall make inquiries relative to abortion in neat stock.
1884, 232, § 1.

170. It shall be the duty of the cattle commissioners to make inquiries and gather facts and statistics in relation to the prevalence among the neat stock of this state, of the disease known as abortion, the annual losses caused thereby, and its effect on the healthfulness of milk as an article of food.

May make experiments and exercise other powers.
1884, 232, § 2.

171. To ascertain the real character of the disease, its cause, and the best methods of its cure or prevention, the commissioners may make or cause to be made experiments, investigations and examinations, and for this purpose shall have and exercise all the powers conferred upon them in cases of contagious disease by the provisions of section fourteen of chapter ninety of the Public Statutes.

May kill sick animals.
1884, 232, § 3.

172. The commissioners for the purpose of aiding them in their investigations may kill any animal affected with said disease, and such animal shall be paid for as provided in section seventeen of chapter ninety of the Public Statutes. Said commissioners shall make a detailed statement in their annual report of their doings under the provisions of this act.

Appropriation.
1884, 232, § 4.

173. There shall be allowed and paid out of the treasury a sum not exceeding two thousand dollars, to be expended as may be necessary in carrying out the provisions of this act.

174. Whoever has knowledge of the existence of a contagious disease among any species of domestic animals in this state, whether such knowledge is obtained by examination or otherwise, shall forthwith give notice thereof to the board of aldermen of the city or the selectmen of the town where such diseased animals are kept, and for failure so to do shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in jail not exceeding one year.

Aldermen or selectmen to be notified of contagious disease in domestic animals. Penalty for neglect. 1885, 148, § 1.

175. The board of aldermen of a city or the selectmen of a town having received notice of a contagious disease among domestic animals in their city or town, shall forthwith inform the board of cattle commissioners of the existence of such contagious disease.

Aldermen or selectmen to notify cattle commissioners. 1885, 148, § 2.

176. The cattle commissioners, in the necessary discharge of their duties, may administer oaths.

Commissioners may administer oaths. 1885, 148, § 4.

MEDICAL SOCIETIES; DEGREES OR DIPLOMAS.

177. No corporation organized for medical purposes under the provisions of chapter one hundred and fifteen of the Public Statutes shall confer degrees, or issue diplomas or certificates conferring or purporting to confer degrees, unless specially authorized by the legislature so to do.

Medical societies not to confer degrees unless authorized by legislature. 1883, 268, § 1.

178. An officer, agent or servant of any corporation mentioned in section one, or any other person conferring degrees, or signing, issuing or authorizing the signing or issuing of any diploma or certificate purporting to confer any degree of medicine or surgery, contrary to the provisions of this act, shall be punished by fine of not less than five hundred dollars, nor more than one thousand dollars.

Penalty for violation of act. 1883, 268, § 2.

COLOR-BLINDNESS AND DEFECTIVE SIGHT.

179. No railroad corporation shall employ or keep in its employment, in a position which requires the person employed therein to distinguish form or color signals, any

Railroad employees to be examined relative to color-blindness and defective sight.

Public Statutes,
112, § 179.
1883, 125.

person, unless he has been examined for color-blindness or other defective sight by some competent person employed by the corporation and has received a certificate that he is not disqualified for such position by color-blindness or other defective sight. A railroad corporation shall forfeit one hundred dollars for each violation of the provisions of this section.

INSTRUCTION IN PHYSIOLOGY AND HYGIENE; ALCOHOL,
STIMULANTS AND NARCOTICS.

Physiology and
hygiene to be
taught in public
schools, includ-
ing special in-
struction as to
effects of alco-
hol, etc.
1885, 332.

180. Physiology and hygiene, which, in both divisions of the subject, shall include special instruction as to the effects of alcoholic drinks, stimulants and narcotics on the human system, shall be taught as a regular branch of study to all pupils in all schools supported wholly or in part by public money, except special schools maintained solely for instruction in particular branches, such as drawing, mechanics, art, and like studies. All acts or parts of acts relating to the qualifications of teachers in the public schools shall apply to the branch of study prescribed in this act.

GENERAL LAWS

RELATIVE TO

ADULTERATION.

FOOD AND DRUGS.

1. No person shall, within this Commonwealth, manufacture for sale, offer for sale, or sell any drug or article of food which is adulterated within the meaning of this act.

Adulteration prohibited.
1882, 263, § 1.

2. The term "drug" as used in this act shall include all medicines for internal or external use, antiseptics, disinfectants and cosmetics. The term "food" as used herein shall include confectionery, condiments and all articles used for food or drink by man.

Definition of terms "drug" and "food."
1882, 263, § 2.

3. An article shall be deemed to be adulterated within the meaning of this act, —

(a.) In the case of drugs, — (1.) If, when sold under or by a name recognized in the United States Pharmacopœia, it differs from the standard of strength, quality or purity laid down therein, unless the order calls for an article inferior to such standard, or unless such difference is made known or so appears to the purchaser at the time of such sale; (2.) If, when sold under or by a name not recognized in the United States Pharmacopœia but which is found in some other pharmacopœia, or other standard work on *materia medica*, it differs materially from the standard of strength, quality or purity laid down

Drugs, how adulterated.
1882, 263, § 3.

Official drugs may be sold as called for, or as variation is made known to the purchaser.
1884, 289, § 7.

in such work ; (3.) If its strength or purity falls below the professed standard under which it is sold :

Food, how
adulterated.

(b.) In the case of food, — (1.) If any substance or substances have been mixed with it so as to reduce, or lower, or injuriously affect its quality or strength ; (2.) If any inferior or cheaper substance or substances have been substituted wholly or in part for it ; (3.) If any valuable constituent has been wholly or in part abstracted from it ; (4.) If it is an imitation of, or is sold under the name of, another article ; (5.) If it consists wholly or in part of a diseased, decomposed, putrid or rotten animal or vegetable substance, whether manufactured or not, or, in the case of milk, if it is the produce of a diseased animal ; (6.) If it is colored, coated, polished or powdered, whereby damage is concealed, or if it is made to appear better or of greater value than it really is ; (7.) If it contains any added poisonous ingredient, or any ingredient which may render it injurious to the health of a person consuming it.

Provisions of
act not to apply
to labelled com-
pounds or mix-
tures when not
injurious to
health.

4. The provisions of this act shall not apply to mixtures or compounds recognized as ordinary articles of food or drinks, provided that the same are not injurious to health, and are distinctly labelled as mixtures or compounds. And no prosecutions shall at any time be maintained under said act concerning any drug the standard of strength or purity whereof has been raised since the issue of the last edition of the United States Pharmacopœia, unless and until such change of standard has been published throughout the Commonwealth.

No prosecution
to be made rela-
tive to drugs, if
standard of
same has been
raised since the
issue of the last
edition of the
Pharmacopœia
until such
change has been
published.
1884, 289, § 5.

State board shall
make investiga-
tions and may
appoint inspec-
tors, analysts
and chemists.
1882, 283, § 5.

5. The state board of health shall take cognizance of the interests of the public health relating to the sale of drugs and food and the adulteration of the same, and shall make all necessary investigations and inquiries in reference thereto, and for these purposes may appoint inspectors, analysts and chemists, who shall be subject to its supervision and removal.

The board shall
make regula-
tions as to col-
lecting and

Within thirty days after the passage of this act the said board shall adopt such measures as it may deem necessary

to facilitate the enforcement hereof, and shall prepare rules and regulations with regard to the proper methods of collecting and examining drugs and articles of food. Said board may expend annually an amount not exceeding ten thousand dollars for the purpose of carrying out the provisions of this act: *provided, however*, that not less than three-fifths of said amount shall be annually expended for the enforcement of the laws against the adulteration of milk and milk products.

examining food and drugs, and may expend ten thousand dollars annually in carrying out the provisions of this act. 1882, 263, § 5. 1884, 289, § 1.

Three-fifths to be expended in relation to milk and its products. 1884, 289, § 1.

6. Every person offering or exposing for sale, or delivering to a purchaser, any drug or article of food included in the provisions of this act, shall furnish to any analyst or other officer or agent appointed hereunder, who shall apply to him for the purpose and shall tender him the value of the same, a sample sufficient for the purpose of the analysis of any such drug or article of food which is in his possession.

Samples to be furnished to officers or agents. 1882, 263, § 6. See also 1886, 318, § 1. Manual, p. 75.

7. Whoever hinders, obstructs, or in any way interferes with any inspector, analyst, or other officer appointed hereunder, in the performance of his duty, and whoever violates any of the provisions of this act, shall be punished by a fine not exceeding fifty dollars for the first offence, and not exceeding one hundred dollars for each subsequent offence.

Obstruction and its penalty. 1882, 263, § 7.

8. The state board of health shall report annually to the legislature the number of prosecutions made under said chapter, and an itemized account of all money expended in carrying out the provisions thereof.

State board to report prosecutions and money expended. 1883, 263, § 2. 1884, 289, § 2.

9. An inspector appointed under the provisions of said chapter two hundred and sixty-three of the acts of the year eighteen hundred and eighty-two shall have the same powers and authority conferred upon a city or town inspector by section two of chapter fifty-seven of the Public Statutes.

Powers of inspectors. 1884, 289, § 3.

10. Nothing contained in chapter two hundred and sixty-three of the acts of the year eighteen hundred and eighty-two shall be in any way construed as repealing or

Act of 1882 does not affect chapter 57 of the Public Statutes. 1884, 289, § 4.

amending anything contained in chapter fifty-seven of the Public Statutes.

Samples to be sealed for benefit of defendant. 1884, 289, § 8.

11. Before commencing the analysis of any sample the person making the same shall reserve a portion which shall be sealed; and in case of a complaint against any person the reserved portion of the sample alleged to be adulterated shall upon application be delivered to the defendant or his attorney.

Selling corrupt or unwholesome provisions without notice. Public Statutes, c. 208, § 1.

12. Whoever knowingly sells any kind of diseased, corrupted, or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, shall be punished by imprisonment in the jail not exceeding six months, or by fine not exceeding two hundred dollars.

1784.

The gist of the offence under this section consists in the guilty knowledge or evil intent of a party in selling what he knows to be unfit for food. The sale, of itself, is not made criminal; but it is the sale coupled with the knowledge of the diseased state of the thing sold which constitutes the offence.

Commonwealth v. Boynton, 12 Cush. 499.

Adulterating food. Public Statutes, c. 208, § 3.

13. Whoever fraudulently adulterates, for the purpose of sale, bread or any other substance intended for food, with any substance injurious to health, or knowingly barters, gives away, sells, or has in possession with intent to sell, any substance intended for food, which has been adulterated with any substance injurious to health, shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding three hundred dollars; and the articles so adulterated shall be forfeited, and destroyed under the direction of the court.

Adulterating liquor used for drink, with Indian cockle, etc. Public Statutes, c. 208, § 4.

14. Whoever adulterates, for the purpose of sale, any liquor used or intended for drink, with Indian cockle, vitriol, grains of paradise, opium, alum, capsicum, copperas, laurel-water, logwood, Brazil wood, cochineal, sugar of lead, or any other substance which is poisonous or injurious to health, and whoever knowingly sells any such liquor so adulterated, shall be punished by imprison-

ment in the state prison not exceeding three years ; and the articles so adulterated shall be forfeited.

15. Whoever fraudulently adulterates, for the purpose of sale, any drug or medicine, or sells any fraudulently adulterated drug or medicine, knowing the same to be adulterated, shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding four hundred dollars ; and such adulterated drugs and medicines shall be forfeited, and destroyed under the direction of the court.

Adulteration of
drugs or medi-
cines.
Public Statutes,
c. 208, § 5.

16. Whoever sells arsenic, strychnine, corrosive sublimate, or prussic acid, without the written prescription of a physician, shall keep a record of the date of such sale, the name of the article, the amount thereof sold, and the name of the person or persons to whom delivered ; and for each neglect shall forfeit a sum not exceeding fifty dollars. Whoever purchases deadly poisons as aforesaid, and gives a false or fictitious name to the vender, shall be punished by fine not exceeding fifty dollars.

Persons selling
certain poisons
to keep record,
etc.

Purchasers who
give false name,
etc.
Public Statutes,
c. 208, § 6.

L A W S

RELATIVE TO

SPECIAL ARTICLES OF FOOD.

[The older statutes relative to the weights and measures of sundry articles, and the local inspection of the same, containing much material pertaining to commercial inspection, and irrelevant to the subject of adulteration, are omitted from this *resumé*, with the exception of the statutes relative to milk and provisions and animals intended for slaughter.]

OF THE INSPECTION AND SALE OF MILK AND MILK PRODUCTS.

Appointment of
inspectors of
milk.
Public Statutes,
c. 57, § 1.

1. The mayor and aldermen of cities shall, and the selectmen of towns may, annually appoint one or more persons to be inspectors of milk for their respective places, who shall be sworn before entering upon the duties of their office. Each inspector shall publish a notice of his appointment for two weeks in a newspaper published in his city or town, or, if no newspaper is published therein, he shall post up such notice in two or more public places in such city or town.

Their duties and
powers.
1886, 318, § 1.

2. Such inspectors shall keep an office, and shall record in books kept for the purpose the names and places of business of all persons engaged in the sale of milk within their city or town. Said inspectors may, with the approval of the mayor or the selectmen, employ suitable persons to act as collectors of samples, who shall be sworn before entering upon their duties. Said inspectors, or

the collectors employed and qualified as aforesaid, may enter all places where milk is stored or kept for sale, and all carriages used for the conveyance of milk, and the said inspectors or the collectors may take samples for analysis from all such places or carriages, and at the same time a portion of each sample so taken shall, if the person taking the same be requested so to do, be sealed and delivered to the owner or person from whose possession the same is taken and a receipt given therefor to the person taking the same. The inspectors shall cause the samples of milk so taken to be analyzed or otherwise satisfactorily tested, the results of which analysis or test they shall record and preserve as evidence. The inspectors shall receive such compensation as the mayor and aldermen or selectmen may determine.

Pub. Stats., chap. 57, sect. 2 (Statute of 1864, chap. 122, sect. 2), so far as it authorizes inspectors of milk to enter all carriages used in the conveyance of milk, and, whenever they have reason to believe any milk found therein is adulterated, to take specimens thereof for the purpose of analyzing or otherwise satisfactorily testing the same, is constitutional.

Commonwealth v. Carter, 132 Mass. 12.

3. If the said inspector or collector after being so requested shall refuse or neglect to seal and deliver to the owner or person from whose possession the same is taken, as provided in section one of this act, a portion of the sample taken as aforesaid, no evidence shall be received in any court of the results of the analysis or test of the same, which may have been recorded and preserved as aforesaid.

No evidence of analysis to be received if inspector neglects to deliver sample.
1886, 318, § 3.

4. Whoever makes, uses or has in his possession, any imitation or counterfeit of any seal used by any milk inspector or his agents, and whoever changes or in any manner tampers with any sample taken or sealed as provided in section one, shall be punished by fine not exceeding fifty dollars or by imprisonment in the house of correction not exceeding ninety days.

Penalty for imitating seal or tampering with sample.
1886, 318, § 4.

Persons selling
milk from car-
riages to be
licensed.
Public Statutes,
c. 57, § 3.

5. In all cities, and in all towns in which there is an inspector of milk, every person who conveys milk in carriages or otherwise for the purpose of selling the same in such city or town shall annually, on the first day of May, or within thirty days thereafter, be licensed by the inspector or inspectors of milk of such city or town to sell milk within the limits thereof, and shall pay to such inspector or inspectors fifty cents each to the use of the city or town. The inspector or inspectors shall pay over monthly to the treasurer of such city or town all sums collected by him or them. Licenses shall be issued only in the names of the owners of carriages or other vehicles, and shall for the purposes of this chapter be conclusive evidence of ownership. No license shall be sold, assigned, or transferred. Each license shall record the name, residence, place of business, number of carriages or other vehicles used, name and residence of every driver or other person engaged in carrying or selling said milk, and the number of the license. Each licensee shall before engaging in the sale of milk cause his name, the number of his license, and his place of business to be legibly placed on each outer side of all carriages or vehicles used by him in the conveyance and sale of milk, and he shall report to the inspector or inspectors any change of driver or other person employed by him which may occur during the term of his license. Whoever, without being first licensed under the provisions of this section, sells milk or exposes it for sale from carriages or other vehicles, or has it in his custody or possession with intent so to sell, and whoever violates any of the provisions of this section, shall for a first offence be punished by fine of not less than thirty nor more than one hundred dollars; for a second offence by fine of not less than fifty nor more than three hundred dollars; and for a subsequent offence by fine of fifty dollars and by imprisonment in the house of correction for not less than thirty nor more than sixty days.

6. Every person before selling milk or offering it for sale in a store, booth, stand, or market-place in a city or in a town in which an inspector or inspectors of milk are appointed, shall register in the books of such inspector or inspectors, and shall pay to him or them fifty cents to the use of such city or town; and whoever neglects so to register shall be punished for each offence by fine not exceeding twenty dollars.

Persons selling milk in stores, etc., to be registered.
Public Statutes, c. 57, § 4.

A complaint by H. F., inspector of milk in the city of Boston, alleging that the defendant, being a dealer in milk, and being recorded as a dealer in milk in the books of said H. F., sold adulterated milk in violation of the provisions of Pub. Stats., chap. 57, sect. 4 (Gen. Stats., chap. 49, sect. 151), does not sufficiently allege that he was recorded in the books of the inspector as a dealer in milk.

Commonwealth v. O'Donnell, 1 Allen, 593.

A complaint for selling adulterated milk in violation of the provisions of Pub. Stats., chap. 57, sect. 4 (Gen. Stats., chap. 49, sect. 151), which, after alleging the official character of the inspector, and that he kept an office and books as required by the statute, charges that the defendant, being a dealer in milk, and being recorded as a dealer in milk "in the books of said inspector," did sell, etc., does not sufficiently show that he was recorded in any such books as the statute requires the inspector to keep.

Commonwealth v. McCarron, 2 Allen, 157.

7. Whoever, by himself or by his servant or agent, or as the servant or agent of any other person, sells, exchanges or delivers, or has in his custody or possession with intent to sell or exchange, or exposes or offers for sale or exchange, adulterated milk, or milk to which water or any foreign substance has been added, or milk produced from cows fed on the refuse of distilleries, or from sick or diseased cows, or milk not of good standard quality, shall, for a first offence, be punished by fine of not less than fifty nor more than two hundred dollars; for a second offence, by fine of not less than one hundred nor more than three hundred dollars, or by imprisonment in the house of correction for not less than thirty nor more than sixty days, and, for a subsequent offence, by fine of fifty dollars and by imprisonment in the house of

Penalty for selling, etc., adulterated milk.
Public Statutes, c. 57, § 5.
1886, 318, § 2.

correction for not less than sixty nor more than ninety days.

1. A person may be convicted of selling adulterated milk, under Pub. Stats., chap. 57, sect. 5 (Gen. Stats., chap. 49, sect. 151), although he did not know it to be adulterated; and an averment in the indictment that he had such knowledge may be rejected as surplusage.

2. It is not necessary, in such indictment, to aver that the milk was cow's milk.

3. An indictment under alleging a sale of adulterated milk to a woman is not defeated by proof that she was married and was acting as agent for her husband, if the seller had no notice, express or implied, of these facts.

4. An indictment under Pub. Stats., chap. 57, sect. 5 (Gen. Stats., chap. 49, sect. 151), which charges that the defendant sold a certain quantity of "adulterated milk, to which a large quantity, that is to say, four quarts, of water had been added," is not bad for duplicity.

Commonwealth v. Farren, 9 Allen, 489.

1. An indictment which alleges that the defendant "did unlawfully keep, offer for sale and sell" adulterated milk charges but one offence.

2. In support of such indictment, one, who in a great many instances has used a lactometer for the purpose of testing the quality and the purity of milk, may testify to the result of an experiment made by him with the same lactometer upon the milk in question, although no evidence is offered as to the character of the instrument.

Commonwealth v. Nichols, 10 Allen, 199.

1. At the trial of an indictment on Pub. Stats., chap. 57, sect. 5 (Statute of 1868, chap. 263), for selling adulterated milk, there was evidence that the defendant [who was a son of the owner of a milk route], with a companion who was in the same employment with himself, knowingly adulterated milk on its way for distribution to his father's customers, and then, having charge, with his companion, of its distribution from the wagon on which it was conveyed upon the route, caused a can of it to be delivered to one of the customers by the hand of his companion. *Held*, that he had no ground of exception to instructions to the jury, that, in the absence of proof of any previous contract to supply milk to the customer, the delivery might be deemed an act of sale; nor to an instruction framed on a supposition that the jury might find that he was in the employment of his father, although there was no averment in the indictment to that effect.

Commonwealth v. Haynes, 107 Mass. 194.

A person may be convicted of selling adulterated milk upon a complaint under Pub. Stats., chap. 57, sect. 5 (Statute of 1880, chap. 209, sect. 8), without allegation or proof that he knew it to be adulterated.

Commonwealth v. Evans, 132 Mass. 11.

A complaint under Pub. Stats., chap. 57, sect. 5, alleging that the defendant, at a time and place named, had in his possession a certain quantity, to wit, one pint, of adulterated milk, to wit, milk containing less than thirteen per cent. of milk solids, with intent then and there unlawfully to sell the same, is sufficient, without further alleging that the milk was analyzed, and found on analysis to contain less than thirteen per cent. of milk solids. At the trial of a complaint under Pub. Stats., chap. 57, sect. 5, alleging that the defendant had in his possession adulterated milk, to wit, milk containing less than thirteen per cent. of milk solids, with intent to sell the same, it is immaterial in what manner the quantity of milk solids has been reduced below thirteen per cent., if the intent is to sell the milk as pure milk, and not as skimmed milk.

Commonwealth v. Bowers, 140 Mass. 483.

8. Whoever, by himself or by his servant, or as the servant or agent of any other person, sells, exchanges, or delivers, or has in his custody or possession with intent to sell or exchange, or exposes or offers for sale as pure milk, any milk from which the cream or a part thereof has been removed, shall be punished by the penalties provided in the preceding section.

Penalty for selling milk from which cream has been removed. Public Statutes, c. 57, § 6.

9. No dealer in milk, and no servant or agent of such a dealer, shall sell, exchange, or deliver, or have in his custody or possession with intent to sell, exchange, or deliver milk from which the cream or any part thereof has been removed, unless in a conspicuous place above the centre upon the outside of every vessel, can or package from or in which such milk is sold, the words "SKIMMED MILK" are distinctly marked in uncondensed Gothic letters not less than one inch in length. Whoever violates the provisions of this section shall be punished by the penalties provided in section five.

Vessels containing milk from which cream has been removed to be marked "skimmed milk." Public Statutes, c. 57, § 7. 1885, 352, § 7.

10. No person shall sell, exchange or deliver, or have in his custody or possession with intent to sell, exchange or deliver, skimmed milk containing less than nine and three-tenths per cent. of milk solids exclusive of fat. Whoever violates the provisions of this section shall be punished by the penalties provided in section five of chapter fifty-seven of the Public Statutes.

Standard of skimmed milk and penalty for violation. 1895, 352, § 8.

Penalty on inspectors, etc., for conniving, etc.
Public Statutes, c. 57, § 8.
1884, 310, § 5.

11. Any inspector of milk, and any servant or agent of an inspector, who wilfully connives at or assists in a violation of the provisions of this chapter, and whoever hinders, obstructs, or in any way interferes with any inspector of milk, or any servant or agent of an inspector, in the performance of his duty, shall be punished by fine of not less than one hundred nor more than three hundred dollars, or by imprisonment for not less than thirty nor more than sixty days.

What milk to be deemed adulterated.
1886, 318, § 2.
(Last clause.)

12. In all prosecutions under chapter three hundred and eighteen of the acts of eighteen hundred and eighty-six, if the milk is shown upon analysis to contain more than eighty-seven per cent. of watery fluid, or to contain less than thirteen per cent. of milk solids, or to contain less than nine and three-tenths per cent. of milk solids exclusive of fat, it shall be deemed for the purposes of this act to be not of good standard quality, except during the months of May and June, when milk containing less than twelve per cent. of milk solids shall be deemed to be not of good standard quality.

Pub. Stats., chap. 57, sect. 9 (Statute of 1880, chap. 209, sect. 7), providing that "in all prosecutions under this act," for selling adulterated milk, "if the milk shall be shown upon analysis to contain more than eighty-seven per centum of watery fluid or to contain less than thirteen per centum of milk solids, it shall be deemed for the purposes of this act to be adulterated," is constitutional.

Commonwealth v. Evans, 132 Mass. 11.

A complaint under the Pub. Stats., chap. 57, sects. 5, 9, alleging that the defendant, at a time and place named, had in his custody and possession a certain quantity, to wit, one pint, of adulterated milk, to wit, milk then and there containing less than thirteen per cent. of milk solids, with intent then and there unlawfully to sell the same, is sufficient.

Commonwealth v. Keenan, 139 Mass. 193.

Inspectors to institute complaints.
Public Statutes, c. 57, § 10.

13. It shall be the duty of every inspector to institute a complaint for a violation of any of the provisions of this chapter on the information of any person who lays before him satisfactory evidence by which to sustain such complaint.

14. Each inspector shall cause the name and place of business of every person convicted of selling adulterated milk, or of having the same in his possession with intent to sell, to be published in two newspapers in the county in which the offence was committed.

Names, etc., of persons convicted to be published. Public Statutes, c. 57, § 11.

15. Inspectors appointed under the provisions of chapter two hundred and sixty-three of the acts of the year eighteen hundred and eighty-two shall have the power and authority conferred upon a city or town inspector by section one of chapter three hundred and eighteen of the acts of eighteen hundred and eighty-six. They shall also have the power and authority conferred upon inspectors of milk by section twenty of chapter fifty-six of the Public Statutes.

Powers of inspectors under chap. 263 of acts of 1882. 1885, 352, § 5.

16. Municipal, district and police courts and trial justices shall, in their respective counties, concurrently with the superior court, have jurisdiction of cases arising under the provisions of chapter fifty-seven of the Public Statutes relating to the inspection and sale of milk, and may impose the same penalties for any violation of the provisions of said chapter as therein provided.

Lower courts may try milk cases. 1885, 149, § 1.

BUTTER, IMITATION BUTTER AND CHEESE.

17. Whoever, by himself or his agents, sells, exposes for sale, or has in his possession with intent to sell, any article, substance or compound, made in imitation or semblance of butter or as a substitute for butter, and not made exclusively and wholly of milk or cream, or containing any fats, oils or grease not produced from milk or cream, shall have the words "imitation butter," or if such substitute is the compound known as oleomargarine, then the word "oleomargarine," or if it is known as butterine, then the word "butterine," stamped, labelled or marked in a straight line in printed letters of plain, uncondensed Gothic type, not less than one-half inch in length, so that said words cannot be easily defaced, upon the top, side and bottom of every tub,

Spurious butter to be marked. 1886, 317, § 1.

Retail packages
to be marked.

firkin, box or package containing any of said article, substance or compound. The said stamp, label or mark shall contain no other words. And whoever, by himself or his agents, exposes or offers for sale any of the said article, substance or compound not in the original package, shall attach to the said article, substance or compound, in a conspicuous place, a label bearing the words "imitation butter," "oleomargarine," or "butterine," as the article may be, in printed letters of plain, uncondensed Gothic type, not less than one-half inch in length. And in cases of retail sales of any of said article, substance or compound not in the original packages, the seller shall, by himself or his agents, attach to each package so sold, and shall deliver therewith to the purchaser, a label or wrapper bearing in a conspicuous place upon the outside of the package the words "imitation butter," "oleomargarine," or "butterine," and no other words, in printed letters in a straight line of plain, uncondensed Gothic type, not less than one-half inch in length.

Spurious cheese
to be plainly
marked as such.
Public Statutes,
c. 56, § 18.
1885, 352, § 2.

18. Whoever, by himself or his agents, sells, exposes for sale, or has in his possession with intent to sell, any article, substance or compound made in imitation or semblance of cheese, or as a substitute for cheese, and not made exclusively and wholly of milk or cream, or containing any fats, oils or grease not produced from milk or cream, shall have the words "imitation cheese," stamped, labelled or marked, in printed letters of plain, uncondensed Gothic type, not less than one inch in length, so that said words cannot be easily defaced, upon the side of every cheese cloth or band around the same, and upon the top and side of every tub, firkin, box or package containing any of said article, substance or compound. And in case of retail sales of any of said article, substance or compound not in the original packages, the seller shall, by himself or his agents, attach to each package so sold at retail, and shall deliver therewith to the purchaser, a label or wrapper bearing in a conspicuous place upon the out-

Wrappers to be
marked.

side of the package the words "imitation cheese," in printed letters of plain, uncondensed Gothic type, not less than one-half inch in length.

19. Whoever sells, exposes for sale, or has in his possession with intent to sell, any article, substance or compound made in imitation or semblance of butter or cheese, or as a substitute for butter or cheese, except as provided in the two preceding sections, and whoever with intent to deceive, defaces, erases, cancels or removes any mark, stamp, brand, label or wrapper provided for in said sections, or in any manner shall falsely label, stamp or mark any box, tub, article or package marked, stamped or labelled as aforesaid, shall for every such offence forfeit to the city or town where the offence was committed one hundred dollars, and for a second and each subsequent offence two hundred dollars.

Penalties for violation of statutes and for erasure of marks, etc. 1886, 317, § 2.

20. Inspectors of milk shall institute complaints for violations of the provisions of the three preceding sections when they have reasonable cause to believe that such provisions have been violated, and on the information of any person who lays before them satisfactory evidence by which to sustain such complaint. Said inspectors may enter all places where butter or cheese is stored or kept for sale, and said inspectors shall also take specimens of suspected butter and cheese, and cause them to be analyzed or otherwise satisfactorily tested, the result of which analysis or test they shall record and preserve as evidence; and a certificate of such result, sworn to by the analyzer, shall be admitted in evidence in all prosecutions under this and the three preceding sections. The expense of such analysis or test, not exceeding twenty dollars in any one case, may be included in the costs of such prosecutions. Whoever hinders, obstructs, or in any way interferes with any inspector, or any agent of an inspector, in the performance of his duty, shall be punished by a fine of fifty dollars for the first offence, and of one hundred dollars for each subsequent offence.

Complaints for violation of laws to be instituted by inspectors of milk. 1884, 310, § 2.

Terms "butter"
and "cheese"
defined.
Public Statutes,
c. 56, § 21.

21. For the purposes of the four preceding sections the terms "butter" and "cheese" shall mean the products which are usually known by these names, and are manufactured exclusively from milk or cream, with salt and rennet, and with or without coloring matter.

Spurious butter
not to be marked
"dairy" or
"creamery."
Penalty.
1886, 317, § 3.

22. Whoever, by himself or his agents, sells, exposes for sale, or has in his possession with intent to sell, any article, substance or compound, made in imitation or semblance of butter or as a substitute for butter, and not made exclusively and wholly of milk or cream, or containing any fats, oils or grease not produced from milk or cream, contained in any box, tub, article or package, marked or labelled with the word "dairy," or the word "creamery," shall for every such offence forfeit to the city or town where the offence was committed one hundred dollars, and for a second and each subsequent offence two hundred dollars.

Persons selling
imitation butter
from carriages
to be licensed.
Penalties.
1886, 317, § 4.

23. Every person who conveys any imitation butter, oleomargarine or butterine in carriages or otherwise, for the purpose of selling the same in any city or town, shall within thirty days of the passage of this act, and annually on the first day of May, or within thirty days thereafter, be licensed by the inspector or inspectors of milk of such city or town to sell the same within the limits thereof, and shall pay to such inspector or inspectors fifty cents to the use of the city or town. The inspector or inspectors shall pay over monthly to the treasurer of such city or town all sums collected by him or them. In towns in which there is no inspector of milk, licenses shall be issued by the town clerk. Licenses shall be issued only in the names of the owners of carriages or other vehicles, and shall, for the purposes of this chapter, be conclusive evidence of ownership. No license shall be sold, assigned or transferred. Each license shall record the name, residence, place of business, number of carriages or other vehicles used, the name and residence of every driver or other person engaged in carrying or selling imitation butter, oleo-

margarine or butterine, and the number of the license. Each licensee shall before engaging in the sale of any of the articles as aforesaid cause his name, the number of his license, and his place of business to be legibly placed on each outer side of all carriages or vehicles used by him in the conveyance and sale of the articles as aforesaid, in Gothic letters not less than one inch in length, and he shall report to the inspector or inspectors any change of driver or other person employed by him which may occur during the term of his license. Whoever, without being first licensed under the provisions of this section, sells any of the said articles as aforesaid, or exposes or offers them for sale from carriages or other vehicles, or has them in his custody or possession with intent so to sell, and whoever violates any of the provisions of this section, shall, for a first offence, be punished by fine of not less than thirty nor more than one hundred dollars; for a second offence, by fine of not less than fifty nor more than three hundred dollars.

24. Every person before selling or offering for sale any of the said articles in a store, booth, stand or market-place in a city or in a town in which an inspector or inspectors of milk are appointed, shall within thirty days of the passage of this act, and annually on the first day of May, or within thirty days thereafter, register in the books of such inspector or inspectors, or if there be no inspector then in the books of the town clerk, and shall pay to him or them fifty cents to the use of such city or town; and whoever neglects to so register shall be punished for each offence by fine not exceeding twenty dollars.

Other persons
selling imitation
butter to be
registered.
1886, 317, § 5.

25. Before commencing the analysis of any sample the person making the same shall reserve a portion which shall be sealed; and in case of a complaint against any person the reserved portion of the sample alleged to be adulterated shall upon application be delivered to the defendant or his attorney.

Portion of sam-
ple to be
reserved for
defendant.
1884, 310, § 4.

OF THE INSPECTION AND SALE OF PROVISIONS, AND ANIMALS INTENDED FOR SLAUGHTER.

Appointment of
inspectors of
provisions.
Public Statutes,
c. 58, § 1.

26. The mayor and aldermen of cities and the selectmen of towns may annually appoint one or more persons to be inspectors of provisions and of animals intended for slaughter. Such inspectors shall be sworn faithfully to discharge the duties of their office, and shall receive such compensation as the city council or the selectmen shall determine.

Duties and
powers of
inspectors.
Public Statutes,
c. 58, § 2.

27. Said inspectors may inspect all animals intended for slaughter, and all meats, fish, vegetables, produce, fruits, and provisions of all kinds, found in said cities or towns, or exposed for sale or kept with intent to sell therein; and may for this purpose enter into all buildings or enclosures where said animals, meats, fish, vegetables, produce, fruits or provisions are kept, stored, or exposed for slaughter or sale. When such animals, meat, fish, vegetables, produce, fruit or provisions are found on such inspection to be tainted, diseased, corrupted, decayed, or unwholesome from any cause, said inspectors shall seize the same, and cause them or it to be destroyed or disposed of otherwise than for food; but if, at the time of the seizure, the owner of the property seized notifies in writing the inspector seizing the same of his desire to appeal to the board of health, said inspector shall cause said animals, meat, fish, vegetables, produce, fruit or provisions to be inspected by said board of health, or by a committee thereof consisting of not less than two members; and if said board or committee find the same to be tainted, diseased, corrupted or unwholesome, they shall order the same to be destroyed or disposed of otherwise than for food. If said board or committee do not so find, they shall order said animals, meat, fish, vegetables, produce, fruit or provisions to be forthwith returned to the owner thereof. All moneys received by said inspectors or board of health for property disposed of as aforesaid shall, after

deducting all expenses incurred by reason of such seizure, be paid to the owner of such property.

28. Said inspectors may inspect all veal found in said cities or towns or offered or exposed for sale or kept with intent to sell therein, and if said veal is, in the judgment of the inspector, that of a calf killed under four weeks old, he shall seize the same and cause it to be destroyed or disposed of as provided in the preceding section, subject, however, to the provisions therein contained concerning appeal and the disposal of moneys.

Duties and powers relative to veal. Public Statutes, c. 58, § 3.

29. Whoever kills or causes to be killed, for the purpose of sale, any calf less than four weeks old, or knowingly sells, or has in his possession with intent to sell, the meat of any calf killed when less than four weeks old, shall be punished by imprisonment in the jail or house of correction not exceeding six months, or by fine not exceeding two hundred dollars, or by both such imprisonment and fine; and all such meat exposed for sale, or kept with intent to make sale thereof, may be seized and destroyed by any board of health or health officer, or by any sheriff, deputy-sheriff, constable or police officer.

Killing for sale, or selling calf less than four weeks old. Public Statutes, c. 208, § 2.

Where a party is charged with an offence of "killing, or causing to be killed, for the purpose of sale, any calf less than four weeks old," it is not necessary to allege in the indictment or prove that he knew the calf to be less than four weeks old. The defendant is bound to know the facts and obey the law at his peril.

Under the next clause of this section, the offence is not the killing of the calf, but "*knowingly*" selling, or having in possession with intent to sell, the meat of a calf killed when less than four weeks old; and this language makes the defendant's knowledge essential to be alleged and proved.

The legislature saw fit to make the man who kills, or causes to be killed, a calf for the purpose of sale, at all events punishable if the animal was less than four weeks old; but to punish the man who sells veal only in case he knows it to have been killed when under four weeks old.

Commonwealth v. Raymond, 97 Mass. 567.

30. When complaint is made on oath to any police, district or municipal court, or to a magistrate au-

Search warrants for unwholesome food, etc. Public Statutes, c. 58, § 4.

thorized to issue warrants in criminal cases, that the complainant believes that any diseased animals, or any tainted, diseased, corrupted, decayed, or unwholesome meat, fish, vegetables, produce, fruit, or provisions of any kind, or any veal of a calf killed under four weeks old, are kept or concealed in a particular house or place with the intent to kill, sell, or offer the same for sale for food, the court or magistrate, if satisfied there is reasonable cause for such belief, shall issue a warrant to search for such animals or articles, and all such warrants shall be directed and executed as provided in section three of chapter two hundred and twelve [of the Public Statutes]. If, upon hearing, said court or magistrate determines that said animals or articles or any of them were kept or concealed for the purposes aforesaid, the same shall be destroyed or disposed of by the inspector, or by any officer designated by the court or magistrate according to the provisions of section two of this chapter; if the court or magistrate does not so determine, said animals or articles shall be returned to the owner.

Penalty for knowingly selling, etc., unwholesome food.
Public Statutes, c. 58, § 5.

31. Whoever knowingly sells, or offers or exposes for sale, or has in his possession with intent to sell for food, any diseased animal, or any tainted, diseased, corrupted, decayed, or unwholesome meat, fish, vegetables, produce, fruit, or provisions of any kind whatever, shall be punished by imprisonment in jail for not more than sixty days, or by fine of not more than one hundred dollars.

Name and place of business of person convicted to be published.
Public Statutes, c. 58, § 6.

32. The place where property condemned under this chapter is found, and the name of every person in whose possession it is found, and of every person convicted of an offence under the preceding section, shall be published in two newspapers published in the county in which the property was found or the conviction took place.

This chapter not to be in force unless accepted.
Public Statutes, c. 58, § 7.

33. The provisions of this chapter shall not be in force in any city or town unless they are adopted by the city

council of such city or by the inhabitants of such town, or unless the provisions of chapter one hundred and eighty of the statutes of the year eighteen hundred and seventy-six have been already so adopted.

OF THE SALE OF TAINTED OR DAMAGED FISH.

34. Whoever sells within this Commonwealth or exports therefrom tainted or damaged fish, unless with the intent that the same shall be used for some other purpose than as food, shall forfeit ten dollars for every hundred pounds of such fish, and in the same proportion for any other quantity; and upon a trial in such case the burden of proof shall be upon the defendant to show for what purpose such fish was so exported or sold.

Penalty for selling tainted fish for food. Public Statutes, c. 56, § 45.

1809.

OF THE SALE OF CHOCOLATE.

35. No manufacturer of chocolate shall make any cake of chocolate except in pans in which are stamped the first letter of his christian name, the whole of his surname, the name of the town where he resides, and the quality of the chocolate in figures, *No. 1*, *No. 2*, *No. 3*, as the case may be, and the letters *MASS*.

Chocolate, how to be stamped. Public Statutes, c. 60, § 8.

1803.

36. Number one shall be made of cocoa of the first quality, and number two of cocoa of the second quality, and both shall be free from adulteration; number three may be made of the inferior kinds and qualities of cocoa. Each box containing chocolate shall be branded on the end thereof with the word *chocolate*, the name of the manufacturer, the name of the town where it was manufactured, and the quality, as described and directed in the preceding section for the pans.

Ingredients of.

Boxes, how branded. Public Statutes, c. 60, § 9.

37. If chocolate manufactured in this Commonwealth is offered for sale or found within the same, not being of one of the qualities described in the two preceding sections and marked as therein directed, the same may be seized and libelled.

Boxes, when may be seized, etc. Public Statutes, c. 60, § 10.

OF THE ADULTERATION OF VINEGAR.

Sale of adulterated vinegar.
Penalty.
Public Statutes,
c. 60, § 69.
1883, 257, § 1.

38. Every person who manufactures for sale or offers or exposes for sale as cider vinegar, any vinegar not the legitimate product of pure apple juice, known as apple cider or vinegar, not made exclusively of said apple cider or vinegar, into which any foreign substances, ingredients, drugs or acids have been introduced, as may appear by proper tests, shall for each such offence be punished by fine of not less than fifty nor more than one hundred dollars.

Sale of vinegar containing ingredients injurious to health.
Penalty.
Public Statutes,
c. 60, § 70.

39. Every person who manufactures for sale, or offers or exposes for sale, any vinegar found upon proper tests to contain any preparation of lead, copper, sulphuric acid or other ingredients injurious to health, shall for each such offence be punished by fine of not less than one hundred dollars.

Appointment of inspectors.
Public Statutes,
c. 60, § 71.

40. The mayor and aldermen of cities shall, and the selectmen of towns may, annually appoint one or more persons to be inspectors of vinegar for their respective places, who shall be sworn before entering upon their duties.

Compensation of inspectors.
1883, 257, § 2.

41. Any city or town in which an inspector shall be appointed under the preceding section, may provide compensation for such inspector from the time of such appointment, and in default of such provision shall be liable in an action at law for reasonable compensation for services performed under such appointment.

Sale of adulterated vinegar.
1883, 307, § 1.

42. No person shall by himself, his servant or agent, or as the servant or agent of any other person, sell, exchange, deliver or have in his custody or possession with intent to sell or exchange, or expose or offer for sale or exchange any adulterated vinegar, or label, brand or sell as cider vinegar, or as apple vinegar, any vinegar not the legitimate product of pure apple juice, or not made exclusively from apple cider.

Standard of vinegar prescribed.
1885, 150, § 1.

43. All vinegars shall be without artificial coloring matter, and shall have an acidity equivalent to the presence

of not less than four and one half per cent. by weight of absolute acetic acid, and in the case of cider vinegar shall contain in addition not less than two per cent. by weight of cider vinegar solids upon full evaporation over boiling water, and if any vinegar contains any artificial coloring matter or less than the above amount of acidity, or in the case of cider vinegar, if it contains less than the above amount of acidity or of cider vinegar solids, it shall be deemed to be adulterated within the meaning of this act.

44. It shall be the duty of the inspectors of milk who may be appointed by any city or town to enforce the provisions of this act. Milk inspectors to enforce act. 1884, 307, § 3.

45. Whoever violates any of the provisions of this act shall be punished by fine not exceeding one hundred dollars. Penalty for violation. 1884, 307, § 4.

RULES AND REGULATIONS

OF THE

STATE BOARD OF HEALTH RELATIVE TO THE INSPECTION AND ANALYSIS OF FOOD AND DRUGS.

1. The State Board of Health shall appoint analysts and inspectors, as provided in section 5 of chapter 263, Acts of 1882.

2. It shall be the duty of the inspectors to procure samples of drugs and articles of food at such times and places as the Secretary shall direct, in the manner provided in section 6 of chapter 263 of the Acts of 1882, and in section 3 of chapter 289 of the Acts of 1884, and in all acts amendatory of said provisions.

3. Under the direction of the secretary, one of the inspectors shall, for the identification of samples, affix a number to each sample of food or drugs obtained by him, beginning with number one, and taking every alternate or odd number thereafter, without limit; and the other inspector shall use and affix each alternate or even number, beginning with number two, and following such form of numbering, without limit, also, as far as may be directed. Under no circumstances shall an inspector convey any information to an analyst as to the source from which any sample was obtained.

4. The inspectors shall keep records of each sample, each record to include the following items : —

- (a) The inspector's number.
- (b) The date of purchase or receipt of sample.
- (c) The character of the sample.
- (d) The name of the vender.
- (e) The name of the city or town and street and number where the sample is obtained, and in the case of a licensed milk peddler, the number of his license.
- (f) As far as possible, the names of manufacturers producers or wholesalers, with marks, brands or labels stamped or printed upon goods.

5. It shall be the duty of the analysts so appointed to determine, under the direction of the secretary, by proper examination and analysis, whether articles of food and drugs, manufactured for sale, offered for sale, or sold within this Commonwealth, are adulterated within the meaning of chapter 263 of the Acts and Resolves passed by the General Court of Massachusetts in 1882, and all acts amendatory thereof, adulteration being defined as follows, viz. : —

In the case of drugs, (1) If sold under or by a name recognized in the United States Pharmacopœia, it differs from the standard of strength, quality or purity laid down therein, unless the order calls for an article inferior to such standard, or unless such difference is made known or so appears to the purchaser at the time of such sale. (2) If when sold under or by a name not recognized in the United States Pharmacopœia, but which is found in some other pharmacopœia or standard work on *Materia Medica*, it differs materially from the standard of strength, quality or purity laid down in such work. (3) If its strength or purity falls below the professed standard under which it is sold.

In case of food, (1) If any substance or substances have been mixed with it, so as to reduce or lower or

injuriously affect its quality or strength. (2) If any inferior or cheaper substance or substances have been substituted wholly or in part for it. (3) If any valuable constituent has been wholly or in part abstracted from it. (4) If it is an imitation of or is sold under the name of another article. (5) If it consists wholly or in part of a diseased, decomposed, putrid or rotten animal or vegetable substance, whether manufactured or not, or in the case of milk, if it is the produce of a diseased animal. (6) If it is colored, coated, polished or powdered, whereby damage is concealed, or if it is made to appear of better or of greater value than it really is. (7) If it contains any added poisonous ingredient, or any ingredient which may render it injurious to the health of the person consuming it.

6. It shall also be the duty of the analysts to receive such specimens of food and drugs for analysis as may be delivered to them by the secretary, or by the inspectors, and to examine the same. To avoid, as far as possible, all suggestion or danger of specimens having been tampered with, each analyst shall keep each specimen in his possession in a suitable and secure place, labelled in such a manner as to prevent any person from having access to the same without the knowledge and presence of the analyst.

Analyses of perishable articles should be made promptly after they are received.

7. An analyst shall give no information, under any circumstances, regarding the result of any analysis, to any person except to the secretary of the board, prior to any trial in court in reference to such analysis.

The analysts shall carefully avoid any error regarding the inspector's number attached to each sample, and shall report the results of their work in detail to the secretary.

In the case of all articles having a numerical standard provided by statute, the result of the analysis should show their relation to such standard.

8. Before beginning the analysis of any sample, the analyst shall reserve a portion, which shall be sealed, and in the event of finding the portion analyzed to be adulterated, he shall preserve the sealed portion, so that in case of a complaint against any person the last named portion may, on application, be delivered by the secretary to the defendant or to his attorney.

9. Each analyst shall present to the secretary, on the Thursday before the first Saturday of each month, a summary of the analyses made by him during the previous month.

Each analyst shall also present, on or before the first of January of each year, an annual report of the work done for the year ending on the 30th of September preceding.

10. The secretary shall have charge of the reports of analyses, and shall cause cases founded on such reports to be submitted to the courts for prosecution.

In each case of a retailer, and of every dealer not a manufacturer or producer, he may, if the party has not been previously complained of in court, issue a notice or warning of any violation of the law relative to the adulteration of food and drugs, and of the offender's liability to prosecution on a repetition of the sale.

11. Should the result obtained by any analyst be questioned in any given case, another analyst shall repeat the analysis, unless otherwise instructed by the Board, provided a sufficient sum to meet the expense of the analysis be deposited with the Secretary by any interested party feeling aggrieved, which sum will not be returned unless the second analysis fails to confirm the first in essential particulars.

12. Any appeal from the decision of an analyst shall be filed with the secretary, who shall report it, and any matter in controversy, to the board, giving his judgment thereon, and the Board shall supervise and control the action of its officers in executing the law.

13. Where standards of strength, quality or purity are

not fixed by the act, the analysts shall present to the secretary such standard as in their judgment should be fixed, and the secretary shall report the same to the board for its action. The standards set by the British Society of Public Analysts will be followed, as nearly as practicable, until otherwise ordered.

14. Whenever a drug or preparation, not described in a national pharmacopœia or other standard work on *Materia Medica*, shall be manufactured, offered for sale or used in this State, the standard of such drug, and the standard and proportion of the ingredients of such preparation, and the range of variability from such standard or standards, shall be ascertained by the analysts, who shall report the same through the Secretary to the Board.

15. The analysts shall occupy such time in the performance of their respective duties as a reasonable compliance with the terms of the statute shall require, and shall be present one hour of each day, at such time of the day and at such place as shall be designated by the Board, to meet the convenience of interested parties and the public.

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